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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CENTILLION DATA SYSTEMS, LLC,

Plaintiff-Appellant,

v.

QWEST COMMUNICATIONS INTERNATIONAL, INC.,
QWEST CORPORATION,
and QWEST COMMUNICATIONS CORPORATION,

Defendants-Cross Appellants.

Appeals from the United States District Court for the
Southern District of Indiana in consolidated case nos.
04-CV-0073 and 04-CV-2076, Chief Judge Larry J. McKinney

NON-CONFIDENTIAL JOINT APPENDIX

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The material omitted from this appendix describes technical or proprietary information, and/or cites a document or deposition testimony designated by Qwest as either “CONFIDENTIAL,” “ATTORNEY CONFIDENTIAL,” or “ATTORNEY’S EYES ONLY” or describes technical or proprietary information and/or cites a document or deposition testimony designated by third party Verizon as either “CONFIDENTIAL,” or “VZ CONFIDENTIAL.”

processing step is only “*preferably* performed on a large computer” *Id.* col. 30, ll. 56-57 (emphasis added).

The Court also concludes that the Court’s construction as outline above obviates the need to interpret either the generating or the organizing functions any further. Defendants’ further constructions of these terms do not comport with the plain meaning of the terms in the claims or in the specification. In addition, the Court has necessarily construed the scope of those terms when it discussed the structure necessary for performing those functions. Defendants premised their construction of the generating and organizing functions, in part, on the processes occurring on specific types of hardware. Because the Court has declined to adopt such a structure for the data processing means, the Defendants’ constructions for the functions are likewise flawed. To the extent any clarification of those terms is necessary, the Court adopts Centillion’s construction for those terms because they best comport with the plain meaning of the terms in the claims and the specification.

In summary, the Court concludes that the term “data processing means” is a means-plus-function term that must be construed in accordance with § 112, ¶ 6. The data processing means performs the functions of 1) generating preprocessed summary reports and 2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means. The structure that corresponds to these functions is a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to covert data into a PC-compatible format and its equivalents.

The parties also dispute the meaning of the term “as specified by the user” in the fourth element of claim 1. The Court addresses that element here because it must be construed consistently with the Court’s construction of the data processing means.

2. As Specified by the User

The term “as specified by the user” is read in the following element: “said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means” ‘270 Patent, col. 31, ll. 56-59. Defendants contend that this term should be construed to require that the summary reports be “pre-selected by the service customer” Joint Cl. Constr. Chart, at 2. Defendants’ expert, Dr. Dunsmore asserts that the phrase “specified by the user” has a time-honored plain meaning and means “actively selected by the user.” Dunsmore Decl. ¶ 23. Defendants claim that there is no support for the meaning of this term in the specification, and that the Court must construe this term using its plain meaning rather than rewrite the claim language, as proposed by Centillion, even if it would mean invalidating the claim for lack of a written description. Defs.’ Ans. Mem. on Cl. Constr., at 29-30 (citing, *inter alia*, *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1374 (Fed. Cir. 2004); *Generation II Orthotics, Inc. v. Med. Tech., Inc.*, 263 F.3d 1356, 1365 (Fed. Cir. 2001)).

Centillion argues that the Court should construe the term as “specific to the user.” Joint Cl. Constr. Chart, at 2. Centillion asserts that Defendants have ignored the alternative definition of the verb “specify,” which is “to make specific: give a specific character or application to” Pl.’s Reply Mem. on Cl. Interp. (“Pl.’s Reply”), at 16 (quoting WEBSTER’S THIRD NEW INT’L DICTIONARY OF THE ENG. LANGUAGE UNABRIDGED 2187 (3d ed. 1981), hereinafter “WEBSTER’S THIRD

UNABRIDGED”). Centillion states that this alternative definition is consistent with the specification, which teaches that the transaction records are sorted by specific customer or user prior to generation of the summary reports. *Id.* at 17. In other words, the claim states that the summary reports are sorted such that they are specific to the user. This construction, Centillion contends, is the most consistent with the language of the claims prior to the inventor’s voluntary modification of this element, which added the “specified by” language. *Id.* Prior to modification, the element read: “selecting . . . records relating to service usage and exact charges for said user” Pl.’s Ex. 8, Amendment, App. Ser. No. 07/984,374, June 30, 1993. Moreover, Centillion argues that the language used by the inventors in other claims to assert when the user controls the output also supports Centillion’s definition for the “as specified by the user” phrase. Pl.’s Reply, at 18-19 (citing claims 13 and 47). In such a case, Centillion asserts, where a claim is amenable to more than one construction, it should be construed to preserve its validity. *Id.* at 17-18 (citing, *inter alia*, *Wang Labs. Inc. v. Am. Online, Inc.*, 197 F.3d 1377, 1382 (Fed. Cir. 1999); *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, 14 F.3d 1547, 1556 (Fed. Cir. 1997)).

In the context of the ‘270 patent, the Court agrees with Defendants that the plain meaning of the phrase “as specified by the user” requires that the service customer select, or make specific, the character of the preprocessed summary reports. Even accepting the WEBSTER’S THIRD UNABRIDGED definition of “specified” as correct, Centillion’s construction of the phrase “as specified by the user” changes the verb of the phrase and changes the subject of the phrase as well. Such a construction would do exactly what the Federal Circuit has cautioned against: it would rewrite the claim language. *See Chef Am., Inc.*, 358 F.3d at 1374 (stating that the Federal Circuit

“repeatedly and consistently has recognized that courts may not redraft claims”). Centillion’s construction contorts the plain meaning of the phrase too much.

The Court is not persuaded by Centillion’s other arguments that the plain meaning is changed by the language of other claims or the specification. The elements that require the user to control the data is just that: a modification of another claim element that speaks to a direct relationship between the user and the data. The claim element in which the “as specified by the user” term appears does not necessarily require the user to directly control the data processing means. Rather, the phrase leaves open the possibility that the user’s instructions are carried out by a third-party. Such a possibility is likewise not foreclosed by the specification where it teaches that the preprocessing could be carried out by the service provider or a third-party processor. ‘270 Patent, col. 3, l. 66-col. 4, l. 2 (“These functions may be performed by a third party processor engaged in the business of providing such services to service providers and their subscribers, or by the provider itself . . .”).

There is no other reasonable interpretation to the phrase “as specified by the user:” the phrase requires that the service customer select, or make specific, the character of the preprocessed summary reports. For this reason the Court concludes that the term “as specified by the user” means “the service customer selects, or makes specific, the character of.”

D. MEANS FOR TRANSFERRING

The next disputed term is “means for transferring.” There are two elements that use this phrase, the third and fifth elements. Those elements state:

means for transferring at least a part of said individual transaction records from said storage means to said data processing means

* * *

means for transferring said individual transaction records including said summary reports from said data processing means to said personal computer data processing means

'270 Patent, col.31, ll. 53-66. The parties agree that these terms are written in means-plus-function language and should be construed in accordance with § 112, ¶ 6. With respect to the third element, the parties also agree that the function that corresponds to this means is "transferring at least part of said individual transaction records from said storage means to said data processing means." Joint Cl. Constr. Chart, at 2. Similarly, the parties agree that the function of the fifth element is "[t]ransferring said individual transaction records including said summary reports from said data processing means to said personal computer data processing means." *Id.* at 4. Not surprisingly, the parties disagree on the structure that corresponds to either of these functions. Centillion argues that the corresponding structure for either function is "[d]iskettes, magnetic tape, magnetic disks and data communication lines, or the equivalents thereof, including magnetic or optical media or devices, such as CD ROM, phone lines, network connections, or the internet." *Id.* at 2 & 4. Defendants contend, however, that the transferring structure for the third element is "[a] magnetic tape, disk, or electronic data lines, and mainframe software application TPSB010." *Id.* at 2. But, the transferring structure for the fifth element is "[a] diskette formatted for use on a personal computer, PC software application SBPROC02, software transfer data from the diskette to the personal computer data processing means with diskette drive." *Id.* at 4.

The Court largely agrees with Centillion, but considers Centillion's attempt to list the equivalent structures improper. The patent specification clearly states that "billing information may be received from one or more telecommunications carriers via magnetic tape, disk, or data communications lines (referred to hereafter for simplicity as 'billing tape' or simply 'tape')." '270 Patent, col. 7, ll. 15-19. This disclosure clearly associates the transferring function of the third element of claim 1 with "magnetic tape, disk, or data communications lines" *See also id.* col. 35, ll. 20-34 (dependent claims 39, 40 and 41, which further specify the specific media that performs the transferring function between a carrier and the data processing means of the '270 patented invention). Similarly, the Detailed System Description states that carrier billing information "is received via magnetic media or telephone communications channels" *Id.* col. 10, l. 66 to col. 11, l. 2.

The '270 patent specification also discloses that "a program TPSB010 is responsible for retrieving the information from the tape" *Id.* col. 11, ll. 11-12. Defendants use this disclosure to import the specific software into the structure for the means for transferring from the carrier to the data processing means. The Court concludes that this importation is improper. First, only structure that is necessary to perform the transferring function is properly included in the construction of the third element. *See Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1211 (Fed. Cir. 1998). The plain meaning of transferring is to carry or to take from one to another. WEBSTER'S THIRD UNABRIDGED, at 2426-27. The plain meaning of retrieving, however, is to call to mind again or to regain. *Id.* at 1940. Moreover, in the context of the '270 patent, the means for transferring refers to the structure used to effectuate the conveyance of data, not the structure used by the data processing means to recapture or pull off the data. *See* col. 31, ll. 53-55 & ll. 63-66; *id.* col. 35, ll.

20-34; *id.* col. 7, ll. 15-19; *id.* col. 10, ll. 11-12. The Court concludes that the proper construction focuses on the media used for transfer, not the software used to retrieve the data from the media.

Similarly, for the fifth claim element, the structure of the “means for transferring . . . from said data processing means to said personal computer data processing means” is “magnetic tape, disk, or data communications lines (referred to hereinafter for simplicity as ‘billing tape’ or simply ‘tape’).” The patent specification states that once the mainframe has put the data into a format readable by a PC, “[t]he output . . . is then written to a tape” which is further processed into diskettes. ‘270 Patent, col. 8, ll. 42-68. Furthermore, the patent specification defines “tape” as “magnetic tape, disk, or data communications lines” *Id.* col. 7, ll. 17-19. For this reason, the Court concludes that the structure of the “means for transferring . . . from said data processing means to said personal computer data processing means” is “magnetic tape, disk, or data communication lines.”

In summary, the “means for transferring” term should be construed in accordance with § 112, ¶ 6. The functions of this means is “transferring at least part of said individual transaction records from said storage means to said data processing means” and “transferring said individual transaction records including said summary reports from said data processing means to said personal computing data processing means.” The structure that corresponds to these functions is “magnetic tape, disk, or data communication lines, or their equivalents.”

E. ADDITIONAL PROCESSING

Centillion contends that the term “said personal computer data processing means being adapted to perform additional processing” means that a personal computer “is adapted by one or more software programs to execute a series of instructions that perform retrieval and display of a

subset of individual transaction records to the user.” Joint Cl. Constr. Chart, at 4. Centillion asserts that the claims do not require anything more than that the personal computing processing means perform the functions of retrieving summary reports and presenting data.

Defendants also urge the Court to adopt a construction of the term to include two different claim limitations, displaying and presenting. Defendants assert that the function of presenting requires filtering or sorting of data before it can be displayed. Therefore, Defendants contend that the term “additional processing” means “further manipulating, for example, querying, sorting, or filtering, as opposed to just displaying, the individual transaction records within the summary reports.” *Id.*

The Court notes at the outset of this discussion that the exact term the parties expect the Court to construe is elusive. Both parties seem to contend that the disputed clause is “said personal computing data processing means being adapted to perform additional processing,” however, Defendants merely repeat the phrase as their definition, then further define and/or limit the phrase “additional processing.” Joint Cl. Constr. Chart, at 4. A review of Centillion’s infringement contentions also implies that the disputed term is “additional processing” because Centillion focuses on features of the allegedly infringing products the “perform[] additional processing” on ITRs or data. Centillion Infringement Contentions, at 9-10. As a result, the Court will focus on the term “additional processing” because it is the operative language in dispute.

The Court concludes that neither party has properly construed the term “additional processing.” Centillion’s construction seems to completely ignore the term by focusing on what it purports are the functions of the personal computing data processing means, retrieving and presenting. Furthermore, Centillion completely ignores the plain meaning of the phrase “additional

processing,” which is “more action upon” or, as suggested in part by Defendants, “further manipulating.” But, Defendants’ construction unnecessarily eliminates one of the plain meanings of “to present,” which is an identified function of the personal computing data processing means,² when it excludes “displaying.”

First, the Court recognizes that the claim limitation in which the disputed term appears references “processing” and “preprocessing,” which implies that actions are taken on the data before it is “additional[ly] process[ed]” by the personal computing processing means. There is really no dispute about the meaning of preprocessing (action occurring prior to), therefore, construction of the term additional processing must be consistent with the meaning of that term. *See CAE Screenplates Inc.*, 224 F.3d at 1317.

The ‘270 patent specification also supports a construction of additional processing that incorporates the plain meaning of processing. In summarizing the system of the patented invention, the ‘270 patent specification states that the “mainframe processing aspect of the invention” produces “a variety of precalculated summary reports and graphs which are included on the diskette bill and are thus available for display on the user’s personal computer with minimal additional personal computer processing.” ‘270 Patent, col. 7, ll. 12-54. This language mirrors the language of claim 1 in which the personal computing data processing means is adapted to perform additional processing on ITRs. *Id.* col. 31, l. 67 to col. 32, l. 6. In addition, the patent explains that “[i]n order for the customer to display and further analyze this edited and preprocessed information using the

²The Court notes here that neither party discusses whether the proper construction for the term “personal computing data processing means” should be performed in accordance with § 112, ¶ 6, yet both parties discuss the appropriate functions associated with that means. The most likely explanation for this omission is that the parties’ dispute centers around the meaning of “additional processing,” which is what the Court has already concluded.

personal computer, it must be placed on PC-compatible diskettes.” *Id.* col. 8, ll. 55-57. Further, the patent specification teaches that once the preprocessed information, which includes summary reports, has been downloaded into the customer’s PC, “[w]hen reading information from the database, the user application either uses the commercially available interface routines, or a set of proprietary tree traversal routines . . . which substantially improve retrieval efficiency when reading sorted data from keyed tables.” *Id.* col. 5, ll. 9-14. And, more specifically:

The user application program then performs a step **112** which selects the appropriate data necessary to prepare reports of different types and extract specific information from the available data base. The resulting reports m[a]y then be printed out as standard reports or ad hoc inquires **114**, preprocessed reports **120**, graphic reports **126** or a payment coupon for transmission along with payment of the bill to the telecommunications carrier **10**. The first three reports can also be written to storage files **116**, **122** and **128**, or displayed on the video screen of the customer’s personal computer **25** as indicated at **118**, **124** and **130** respectively.

Id. col. 13, ll. 6-17. In other words, the personal computer uses software to display, to further analyze, and to retrieve data, all of which are encompassed by the plain meaning of “additional processing.”

In summary, the Court concludes that in the context of the ‘270 patent, the disputed term “additional processing” has its plain meaning of “more action upon” or “further manipulating.”

F. INDIVIDUAL TRANSACTION RECORDS

The parties dispute with respect to the term “individual transaction records” boils down to whether the term must incorporate “exact charges” into its definition. Defendants’ proposed construction for the term is “more than one record that records the exact charges for individual events.” The term “exact charges,” however, also appears in the claims and has a separate meaning;

the Court sees no reason to incorporate that term into the definition for “individual transaction records,” rather, its plain meaning will suffice. For these reasons, the Court concludes that Centillion’s proposed construction, “records of discrete events” is the correct definition for the term “individual transaction records.”

G. SUMMARY REPORTS

Centillion contends that the proper construction for the next disputed term, “summary reports,” is either “[a] collection of analyzed and/or reorganized data” or “information retrieved from a database that includes an analysis or computation of data, such as totals or averages.” Defendants’ construction is much more complicated, although at its core, it is really not that much different: “[a] grouping or accumulation of an overall set of billing data associated with the individual transaction records, not including all billing data from all such records in the bill for the user.” In essence, Defendants assert that the plain meaning of summary reports should include reference to other claim terms and specifically excludes a summary report that would include all the data for a user. The Court concludes that Defendants construction unnecessarily includes terms that also appear in the claims, and that Defendants’ construction unnecessarily excludes a type of report that could be captured by the ordinary meaning of summary report. There is nothing in the claims, the specification, or the prosecution history that would compel the Court to so limit the meaning of summary report. Therefore, the Court concludes that the proper construction for the term “summary reports” is “a collection of analyzed and/or reorganized data.”

The claims themselves refer to summary reports in the context of a presorting of individual transaction record data for a particular user. *See, e.g.*, col. 31, ll. 56-58 (“said data processing means

generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means . . .”). There is no limit to the number of individual transaction records that are included in the summary report, rather the claims merely require that the summary reports be specified by the user. *Id.*

Similarly, the specification teaches that the ‘270 patented invention preprocesses the transaction data from a supplier to create summary reports. Specifically, the specification states: “a ‘processor’, who, according to the invention, segregates the billing data [received from a service provider] by subscriber, appropriately preprocesses the billing data to produce a variety of in-depth billing analyses in the form of graphs and summary reports and reorganizes both raw and analyzed billing data into an optimal format for storage. . . .” *Id.* col. 3, ll. 14-21. And, “[t]he first stage [of the patented process] reformats data received from the carrier, segregates the records pertaining to each subscriber, analyzes billing data for each subscriber to generate a variety of preprocessed summary reports and graphs, and organizes the data into a table” *Id.* col. 4, ll. 32-49. *See also id.* col. 7, l. 49 to col. 8, l. 6 (the portion of the Detailed Description of the Preferred Embodiment that describes the types of preprocessed reports that could be included). There is nothing in these passages that would exclude a summary report that would include all of the billing data for a particular user, so long as the other requirements of the claims were met.

In summary, the Court concludes that the term “summary reports” means “a collection of analyzed and/or reorganized data.”

H. TELECOMMUNICATIONS & RELATED TERMS

As expected, the parties dispute the breadth of the term “telecommunications” as it is used in the ‘270 patent. Centillion argues that the term has its broadest possible meaning: “any transmission, emission, and reception of signals, writings, images, and sounds, i.e. information of any nature, by cable, radio, optical, or other electromagnetic systems.” Citing the Background of the Invention portion of the ‘270 patent specification, and *Phillips*, Centillion claims that telecommunications had a well-known and ordinary definition in the art at the time of the invention, therefore, the dictionary definitions should suffice.

In contrast, Defendants contend that the term is limited to “the art and science of communicating over a distance by telephone, telegraph and radio.” In other words, Defendants suggest that the term must be limited to telephony systems and cannot include cable television services. Like Centillion, Defendants rely upon the Background of the Invention portion of the ‘270 patent specification and *Phillips* to assert that only Newton’s Telecom Dictionary definition for telecommunications should apply.

The Court concludes that in the context of the ‘270 patent, telecommunications has its broadest possible meaning to a person of ordinary skill in the art at the time of the invention: the electronic transmission of information of any type. *See* Pl.’s Ex. 2, COMPUTER DICTIONARY 339 (Microsoft Press 1991). First, the claims themselves do not impose a limitation on the term telecommunications to telephones or telephony. Rather, in claim 8, telecommunications is used broadly to describe the type of record or service provider to which the patented system is directed. *See* ‘270 Patent, col. 32, ll. 30-33 (stating, “[a] system for presenting . . . usage and actual cost

information relating to telecommunications service provided to [a] user by a telecommunications service provider”).

Defendants urge the Court to incorporate in the term telecommunications the modifier in dependent claim 10, which describes a further limitation on the invention of claim 8. Claim 10 reads: “A system as in claim 8 wherein said selected records relating to telecommunications usage and cost comprise at least one telecommunications call detail record corresponding to a unique telecommunications call to be billed to said subscriber, said call having a length determined by said telecommunications carrier.” *Id.* col. 33, ll. 5-10. In other words, the invention in claim 10 is directed to telecommunications call detail records, which clearly implies a telephone system. However, under the doctrine of claim differentiation, claim 10, and the other independent claims that are directed to telecommunications call detail records, cannot limit the construction of telecommunications in the broader claim, claim 8. *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380 (Fed. Cir. 2006) (describing the application of the doctrine of claim differentiation to determine the scope of a claim term).

Furthermore, as mentioned by each of the parties, but more fully quoted by Centillion, the Background of the Invention portion of the ‘270 patent supports the Court’s conclusion that the term telecommunications should have its broadest possible meaning. The patent states:

Telecommunications costs have become a major expense for many large businesses and other organizations. Today’s competitive business climate requires immediate communications between components of an organization and between the organization and its suppliers and customers. This need alone has produced over the last twenty years a dramatic increase in the use of traditional telecommunications services such as ordinary switched telephone service, leased-line telephone service and telex, typically provided by wireline common carriers. In addition, many non-traditional modes of electronic communications, such as facsimile and a variety of

computer networking schemes use, as a transmission medium, either traditional or new telecommunications services offered by wireline carriers.

Id. col. 1, ll. 35-59. This passage specifically identifies traditional telephone services and other “non-traditional modes of electronic communication” as included in the type of transmissions addressed by the ‘270 patented invention. Therefore, Defendants’ suggestion to limit the definition of telecommunications to telephony would improperly import a limitation from the dependent claims or from the preferred embodiment into this claim term.

For these reasons, the Court concludes that in the context of the ‘270 patent the term “telecommunications” means “the electronic transmission of information of any type.”

Defendants contend that the Court should also construe the terms “telecommunications usage” and “telecommunications call detail record.” In a prior order, the Court decided that the term “telecommunications” was the only term that needed construction because the plain meaning of the remaining terms would suffice. After reading the Defendants’ arguments regarding those terms, the Court concludes that the only remaining term that needs construction is the term “usage.” The parties are **ORDERED** to include their arguments about the proper construction for the term “usage” in their dispositive motions, if any, or, if no dispositive motions are filed, in their motions *in limine*. This particular ORDER is not an invitation for the parties to raise further disputed terms at the dispositive stage of the proceedings.

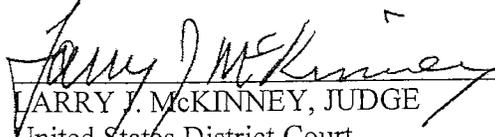
IV. CONCLUSION

For the foregoing reason, the Court construes the disputed terms of the patent-in-suit, U.S. Patent No. 5,287,270, as follows:

CLAIM TERM	CONSTRUCTION
“actual cost”	not a claim limitation
“exact charges actually billed”	the rated cost assigned to each individual transaction record
“means for storing”	a device capable of receiving, retaining, and supplying data
“data processing means”	<p>functions: (1) generating preprocessed summary reports; and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means</p> <p>structure: a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data, and its equivalents</p>
“as specified by the user”	the service customer selects, or makes specific, the character of
“means for transferring”	<p>functions: (1) transferring at least part of said individual transaction records from said storage means to said data processing means, and (2) transferring said individual transaction records including said summary reports from said data processing means to said personal computing data processing means</p> <p>structure: magnetic tape, disk, or data communication lines, or their equivalents</p>
“additional processing”	more action upon or further manipulating
“individual transaction records”	records of discrete events

The parties shall submit their arguments about the proper construction for the term “usage” with their dispositive motions, if any, or, if no dispositive motions are filed, in their motions *in limine*.

IT IS SO ORDERED this 9th day of January, 2008.


HARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff,)	
)	
vs.	)	1:04-cv-0073-LJM-DML
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	
_____)	
)	
QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
)	
vs.	)	1:04-cv-2076
	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC and)	
CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

AMENDED ORDER

This matter comes before the Court on the parties' cross motions for summary judgment pursuant to Federal Rule of Civil Procedure 56(c). In this action, plaintiff/consolidated defendant, Centillion Data Systems, LLC, and consolidated defendant, CTI Group (Holdings), INC. (collectively, "Centillion"), assert that defendants/consolidated plaintiffs, Qwest Communications International, Inc. and Qwest Corporation (collectively, "Qwest"), infringed upon their patent, U.S. Patent No. 5,287,270, Feb. 15, 1994 (the "'270 patent"). Qwest asserts that the '270 patent is invalid. Specifically, it asserts that technology developed and allegedly sold by Verizon, formerly NYNEX, anticipates the '270

patent and renders that patent obvious. Finally, Qwest asserts that the accused applications do not infringe the '270 patent.

Both Centillion and Qwest have moved for summary judgment on Qwest's claim of patent invalidity. In addition, Qwest has moved for summary judgment of non-infringement regarding all of the accused applications. Finally, Centillion has moved for summary judgment of infringement on the accused e-Bill Companion application. The parties have fully briefed their motions¹ and the Court is duly advised. The Court rules as follows.

I. FACTUAL & PROCEDURAL BACKGROUND

A. THE '270 PATENT

The Patent & Trademark Office ("PTO") issued the '270 patent on February 15, 1994, to Compucom Communications Corporation ("Compucom"). Pl.'s Ex. 1 (the '270 patent), Dkt. No. 623(2)-(3). In 1994, Compucom changed its name to Centillion Data Systems, and on February 12, 2001, it merged with CTI Group (Holdings), Inc. ("CTI Group"). As part of the merger, ownership of the '270 patent was transferred from Centillion Data System, Inc. to Centillion Data Systems, LLC. Pl's Br. at ¶ 2, Dkt. No. 623; Def.'s Resp. at 3, Dkt. No. 644 (admitting the allegations in paragraph 2 of Centillion's statement of material facts).

The '270 patent is directed to billing systems that may be utilized by a service customer to manipulate usage and cost information from a service provider, such as a telecommunications company or credit card company. '270 Patent, col. 1, l. 15-20.

¹ Qwest's Motion to Strike Portions of Centillion's Surreply (Dkt. No. 721) is **DENIED**.

According to the '270 patent, increased communication between companies and their clients have increased the need for companies to analyze the costs associated with this communication in an effort to minimize those costs and to allocate them properly. *Id.* Col. 1, l. 35, to col. 2, l. 7. Prior to the system described by the '270 patented invention, methods used to manipulate telecommunications data, in particular, were hampered by paper billing itemized by a call-originating station. *Id.* Col. 2, ll. 8-17. Former processing methods included non-automated methods of hand sorting data; semi-automated methods of manual key-punching or scanning of the paper bill into a computer system; automated methods based on machine-readable tapes from the service provider that contained limited information, or customer-based recording equipment for providing estimated costs. *Id.* Col. 2, ll. 18-57. However, all of these data collection methods had problems. *Id.*

According to the '270 patent, these problems created the need "for a system which provides to large-volume telecommunications customers the ability to conveniently and affordably analyze and manipulate call-detail and other telecommunications transaction information by computer, and which provides results which exactly correspond with the information printed on the customer's paper bill." *Id.* col. 2, ll. 58-64.

The '270 patented invention purports to solve this problem through a system that combines "standard processing hardware and specially designed software for distributing to . . . service customers . . . bills . . . on diskettes compatible with commonly available small and inexpensive personal computers for customer-directed display and in-depth analysis." *Id.* col. 2, l. 67, to col. 3, l. 6. The invention includes two major aspects:

One aspect of the invention includes an application software package, capable of running on a small computer (such as an IBM Personal Computer or compatible computer), which under the direction of the user can:

1. display the telephone bill (or selected subsets thereof) in its ordinary (paper-like) format;
2. display the bill (or selected subset thereof) sorted in non-conventional order (e.g. call detail records sorted by length of call);
3. display a variety of preprocessed summary reports and graphs useful in analyzing telecommunications costs; and
4. display non-preprocessed reports according to user-formulated ad-hoc queries.

* * *

Another aspect of the invention involves the use of appropriate method steps and apparatus and control software for obtaining appropriate billing information from carriers and physically rearranging this information in such a manner that it is optimally pre-processed and reformatted into a form appropriate for efficient and rapid use in subscribers' personal computers, and writing the information in this format on compatible diskettes containing [sic] for distribution to subscribers.

These functions may be performed by a third party processor engaged in the business of providing such services to service providers and their subscribers, or by the provider itself or perhaps even by a large corporate subscriber.

Id. col. 3, l. 34, to col. 4, l. 2. According to the '270 patent, the second aspect of the invention mentioned above produces the following summary reports:

number of calls, length, and total call cost for each accounting or project code;

number of calls, length, and total cost for day, evening and night calls for each carrier;

number of calls, length, and total cost of calls of each call type;

number of calls, length, and total cost for day, evening, and night calls to each terminating area code;

number of calls, length, and total cost for calls of each product type (i.e. carrier's marketing plan);

number of calls, length, and total cost for day, evening, and night calls from each site or location identifier; [and]

number of calls, length, and total cost for calls made from each originating station and authorization code.

Id. col. 7, ll. 49-68, to col. 8, ll. 1-3.

Centillion asserts that the accused applications infringe claims 1, 8, 10, 46, and 47 of the '270 patent. Those claims read:

1. A system for presenting information concerning the actual cost of a service provided to a user by a service provider, said system comprising:

storage means for storing individual transaction records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction records from said storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, and manipulation and display on a personal computer data processing means;

means for transferring said individual transaction records including said summary reports from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said individual transaction records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said selected records including said exact charges actually billed to said user.

* * *

8. A system for presenting, under control of a user, usage and actual cost information relating to telecommunications service provided to said user by a telecommunications service provider, said system comprising:

telecommunications service provider storage means for storing records prepared by a telecommunications service provider related to telecommunications usage for one or more telecommunications subscribers including said user, and the exact charges actually billed to said user by said service provider for said usage;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of the records from said service provider storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said telecommunications usage records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said telecommunications usage records including said summary reports from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said telecommunications records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said telecommunications usage records including said exact charges billed to said user.

* * *

10. A system as in claim 8 wherein said selected records relating to telecommunications usage and cost comprise at least one telecommunications call detail record corresponding to a unique telecommunications call to be billed to said subscriber, said call having a length determined by said telecommunications carrier.

* * *

46. A system as in claim 8 wherein an information interchange media means in the form of a data communications line is employed for transferring said selected records from said data processing means to said personal computer data processing means.

47. A method for presenting information on a personal computer data processing means concerning the actual cost of a service provided to a user by a service provider, said method comprising:

storing individual transaction records prepared by said service provider on a storage means, said transaction records relating to individual service transactions for at least one service customer including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

transferring at least a part of said transaction records from said storage means to a data processing means;

generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

transferring said preprocessed individual transaction records including said summary reports from said data processing means utilizing said summary reports for expedited retrieval of data;

performing additional processing of said individual transaction records on said at least one personal computer data processing means utilizing said summary reports for expedited retrieval of data;

presenting a subset of said individual transaction records chosen via said at least one personal computer processing means including said exact charges actually billed to said user; and

said data processing means and said at least one personal computer processing means comprising respective computation hardware means and respective software programming means arranged for directing the activities of said computation hardware means.

Id. col. 31, l. 39 to col. 36, ll. 3-45. The Court provides additional facts about the '270 patent below as necessary.

B. THE ACCUSED SYSTEMS

Qwest provides billing analysis products to some of its customers under the names Logic and eBill Companion. Belusko Decl., Ex. 10 at QCC-0005104. Qwest also provides a billing analysis product named Insite to BellSouth customers under an agreement with BellSouth. Centillion alleges that Insite is identical to Logic and eBill Companion and, therefore, it has not provided a separate infringement analysis for it. Qwest has a portal referred to as Qwest Control available to business customers. Formerly, Qwest provided a portal referred to as Qwest Remote Control to its wholesale customers; however, it was discontinued. Belusko Decl., Exs. 12 at QCC-1908528; 13 at 191-92. The Qwest Control portal permits access to various Qwest applications, including eBill Companion. Belusko Decl., Exs. 4 at 116-117, 120-21; 11 at QCC-0908003; 15 at QCC-579227. Centillion claims that Qwest infringed claims 1, 8, 10, 46 and 47 through its use of Logic, eBill Companion, and Insite, and the Qwest Control and Qwest Remote Control portals.

Qwest introduced eBill Companion in 2002. Pl's Ex. 2, Dkt. No. 623(4), at 42. The eBill Companion system provides Qwest's commercial customers billing-analysis capability. The eBill Companion system is comprised of two parts: (1) Qwest's Billing Systems, including LATIS, eBill Companion Back Office, and, according to Centillion, "various related 'back office' systems;" and (2) the eBill Companion client applications, which Qwest makes available to all long distance business customers.

The eBill Companion system permits display and billing analysis of long-distance usage for a particular customer. The customers receive the actual billing information either directly from Qwest or, if received on CDROM, through a third party entity contracted for that service by Qwest. Pl's Ex. 4, Dkts. No. 623(6), at QCC-005285-508; Defs.' Ex. 3, Dkt.

No. 643(5), at 293. Call detail records (“CDRs”) relating to discrete customer telephone calls are captured at Qwest’s telecom switches. Pl.’s Exs. 5, Dkt. No. 623(8), at QCC-2941499-529, 2941506; 6, Dkt. No. 623(9), at 341761-82, 3411764. In addition, Qwest’s Billing Systems rate each CDR to include the exact charge actually billed to the customer for the call. Pl.’s Exs. 6, Dkt. No. 623(9), at QCC-341772-73; 7, Dkt. No. 623(10), at 69-71. Qwest stores rated CDRs at several instances, or locations, in the Qwest architecture. For example, the Billing Data Service is a data store for call detail records that have been rated by Qwest’s LATIS Pricing Engine during the LATIS Cycle Processing. Pl.’s Exs. 3, Dkt. No. 623(5); 8, Dkt. No. 623(11), at QCC-617931-37.

The Qwest Billing Systems are software systems running on hardware. In particular, the eBill Companion Back Office (“eBCBO”) is a software application written in JAVA and XML running on the “LXLKPO37” machine in Qwest’s Columbus, Ohio, Cyber Center. Pl.’s Ex. 9, Dkt. No. 624(2). The LATIS system is a software application that runs on the “NTLKPROD,” “SULKPROD,” “LWPROD,” and “LAT A-Z” servers. Pl.’s Exs. 10, Dkt. NO. 624(3); 11, Dkt. No. 624(4). eBCBO fetches call detail records from the Billing Data Server via Billing Data Server Interactive. Call detail records stored on the Billing Data Server are transferred to the eBCBO in response to requests from the Back Office. Although the parties disagree about the specifics, for purposes of this motion the Court assumes that the customer’s billing data pooled by eBill’s “back end” is made available to Qwest’s customers through the Qwest Control portal or on CDROM. Qwest customers can receive the eBill applications software and supporting billing data via either web download through the eBill Companion client application or on CD-ROM. The eBill Companion client application is designed to adapt the customer’s personal computer to display information concerning the

actual cost for services provided by Qwest using the actual billing information received from Qwest.

For all of Qwest's billing systems, Centillion admits that Qwest customers are not obligated or contractually bound to perform additional processing on individual transaction records provided by Qwest. Pl.'s Br., Dkt. No. 655, at 9. Rather, Qwest's customers independently determine whether or not to perform additional processing on individual transaction records provided by Qwest. Moreover, Qwest does not control whether its customers load the Logic or eBill Companion client applications on their personal computers. *Id.* at 9-10. Qwest stores its billing information as it chooses, and transfers it as it chooses to what Centillion and its expert allege is a data processing means. *Id.* at 10. Finally, the "Qwest Alternative Media Support Group Training Manual ("Support Manual")" contains instructions for Qwest personnel to log into a customer's account to assist the customer with technical difficulties. Pl.'s Ex. F, Dkt. NO. 655(8)-(10). However, the record does not contain any evidence of a Qwest employee performing this function for a Qwest customer.

The Court adds additional facts about the accused systems below as needed.

C. COBRA/TRACE

Qwest contends that NYNEX's Customer Oriented Billing Records Analysis system ("COBRA") and Telecommunications Record Analysis for Customer Evaluation system ("TRACE") invalidate the '270 patent and render the '270 patent obvious. Qwest, in large part, relies upon the deposition testimony of four former NYNEX employees. Qwest

asserts that these individuals were intimately involved in the creation and execution of the COBRA and TRACE systems.

Bruce Whitman ("Whitman") was director of billing systems at NYNEX during the 1980s. He claims to have conceived the idea for COBRA in 1986. Jim Coyle ("Coyle"), a former NYNEX manager who reported to Whitman, worked on the COBRA and TRACE projects from 1986 until 1992 or 1993. Pl.'s Ex. C, Dkt. No. 659(4), at 13-14, 34-35. Ed Varley ("Varley") worked for NYNEX from 1968 until 1994. He spent part of his time working in the COBRA and TRACE tape-processing center. Pl.'s Ex. D, Dkt. No. 659(2), at 28, 31-34, 36. Finally, Michael Graves ("Graves") created a substantial portion of the computer programming for COBRA/TRACE, and worked for NYNEX from 1986 to 1989. Pl.'s Ex. A, Dkt. No. 659(2), at 23-24, 40, 101.

According to Whitman, in the 1980s NYNEX faced pressure from business customers to provide an easier, more cost-effective method of reconciling telecommunications bills. Defs.' Ex. 8, Dkt. No. 607(3), at 34, 62. At the time, customers could either cull through stacks of paper bills or use mainframe computers to read magnetic tapes on which telecommunications companies offered billing information electronically. *Id.* at 62-64.

At some point between 1986 and 1988, Whitman claims that he conceived COBRA, a system that he believed would solve the billing problem. *Id.* at 27, 62, 66, 81, 94. According to a video Whitman claims he created in 1987 (the "COBRA video"), COBRA was "a personal computer diskette delivery system with tailored reports to the individual customer's request." Defs.' Ex. 7, Dkt. No. 607(2), at 0:34-0:40, 0:42-1:00. Whitman

testified that “[t]he initial concept was to deliver by floppy disk, readable by personal computer,” actual rated transactions. Defs.’ Ex. 8, Dkt. No. 607(3), at 82.

Whitman and Coyle testified that NYNEX already rated and stored transaction records electronically using mainframe computers and magnetic tape or disk. *Id.* at 44-47, 50, 55; Defs.’ Ex. 9, Dkt. No. 607(4), at 40-41. There were four different types of transaction records for NYNEX telecommunications services: TOLL; station message detail recording (“SMDR”); customer services records (“CSRs”), and other charges and credits (“OCC”).

TOLL records were for rated, point-to-point calls, “usually outside of the area code.” Defs.’ Exs. 8, Dkt. NO. 607(3), at 44-45; 9, Dkt. No. 607(4), at 50. Whitman asserts that a TOLL record included fields such as time of day, duration of call, the number from which the call was placed, the number to which the call was placed, and charge. Defs.’ Ex. 8, Dkt. NO. 607(3), at 44-46.

According to Graves, and as demonstrated by Defendant’s Exhibit 12, a TRACE Demonstration Package, the fields of an SMDR were identical to TOLL except for the width, or number of digits, of the charge field. Defs.’ Exs. 11, Dkt. No. 607(6), at 51, 161; 12, Dkt. No. 608(8), at CENT QWST 00030-31. However, SMDR did not provide a record-by-record charge format. Pl.’s Ex. A, Graves Depo. Tr., Dec. 9, 2008, Vol. 1 at 113, 123. In other words, although both TOLL and SMDR contained point-to-point detail records, Graves testified that SMDR did not have cost information. *Id.* at 123. However, Coyle testified that NYNEX charged local calls not on a per call basis, but rather per volume. Defs.’ Ex. 9, Dkt. No. 607(4), at 39. For example, NYNEX utilized a counter system where a

customer could make one hundred message unit calls per month, but would be charged for any calls over that amount. *Id.* at 39, 49.

Whitman testified that CSRs were “[a]n itemization of the service and equipment that the customer has leased, bought, purchased, [or] rented from the telephone company.” Defs.’ Ex. 8, Dkt. No. 607(3), at 114. Whitman claims that NYNEX held each CSR in a “master file . . . with an associated rental charge for each item of equipment and services.” *Id.* at 55, 114. According to Whitman, there was a CSR for every extension, telephone, switchboard, and data circuit. *Id.* at 55-56.

Finally, Whitman submitted that OCC files included “prorated charges that resulted from addition, deletion, or a change of service mid-month,” including services “like access to the network [and] rental of extension phones.” *Id.* at 52-53. In addition, OCC included onetime charges that only applied when NYNEX had a change to service, for example when an installer went to a location. *Id.* at 53-54.

Whitman and Coyle asserted that, by late 1986, NYNEX used these four stored transaction records to produce bills for its customers. Defs.’ Exs. 8, Dkt. No. 607(3), at 56, 58-59; 9, Dkt. No. 607(4), at 41. In addition, NYNEX produced, for purchasing customers, magnetic tapes that contained each customer’s TOLL, SMDR, CSR, or OCC transaction records. Defs.’ Exs. 8, Dkt. No. 607(3), at 89-90; 9, Dkt. No. 607(4), at 52, 104. However, according to Qwest’s expert, Jack D. Grimes, Ph.D (“Dr. Grimes”), and Whitman, the records on those magnetic tapes were not in a format compatible to personal computer software. Defs.’ Exs. 8, Dkt. No. 607(3), at 72; 13, Dkt. No. 608(9), at 76-79. Therefore, customers would need to process the records further before they could use the records on a personal computer. *Id.* Whitman envisioned using these magnetic tapes as inputs to the

COBRA system, which would process the records at NYNEX so customers with personal computers and popular database management software could use the records. Defs.' Ex. 8, Dkt. No. 607(3), at 85-86.

Whitman testified that COBRA consisted of three components. The first component processed the data, or magnetic tapes, into a format compatible with personal computers and database management software. Defs.' Ex. 8, Dkt. No. 607(3), at 68. The second component consisted of off-the-shelf, modified software that would create "specific templates" that the customer could use to view and further process records. *Id.* Finally, the third component consisted of an installation package for the customer to put on its own hardware to enable the customer to store the records and templates. *Id.* at 68-69.

Under Whitman's direction, Graves claims that he programmed the COBRA system to:

1. Process the transaction records from magnetic tape;
2. Analyze, reorganize, edit, and segregate the records by client and record type, depending on the customer's subscription;
3. Populate database tables with the processed transactions records;
4. Store those database tables in dBase files on diskettes for customers; and
5. Create command files that a customer could use with dBase on its personal computer to view and manipulate the transaction records in the dBase files.

Defs.' Exs. 11, Dkt. No. 607(6), at 43-45, 47-50, 53-60, 98; 14, Dkt. No. 607(7), at 262, 263-64, 268-70, 273, 279; 18, Dkt. No. 607(11), at 134, 151-53; 19, Dkt. No. 607(12), at GR 000007. Coyle asserts that he assisted Whitman with COBRA demonstrations, including demonstrations that utilized the COBRA video. Defs.' Exs. 8, Dkt. No. 607(3), at 97; 9, Dkt. No. 607(4), at 68-69.

Citing Whitman's testimony and a COBRA Operator's Manual, Qwest claims that NYNEX first rolled out COBRA to trial customers in 1987. Defs.' Ex. 15, Dkt. No. 607(8), at CENTVZ 01971-01981. Whitman recalled providing the manual to NYNEX's customers—Morgan Stanley, for example—and that all of NYNEX's trial customers utilized COBRA to view their actual transaction records. Defs.' Ex. 8, Dkt. No. 607(3), at 108-112, 159, 200-01, 203-04. According to the COBRA Trial Customer Documentation Release 2.0, depending on a NYNEX customer's initial subscription request, the customer would "receive one or all of the DBASE database files and their related indices." Defs.' Ex. 21, Dkt. No. 607(14), at CENTVZ-01933. Whitman asserts that during this time he gave over forty demonstrations. Defs.' Ex. 8, Dkt. No. 607(3), at 98.

Whitman testified that, in the fall of 1987, NYNEX decided to launch COBRA on a subscription basis and, for marketing reasons, rebranded it as TRACE. *Id.* at 11, 145, 158. As part of that effort, Whitman claims that NYNEX created and distributed an introductory package to prospective subscribing customers. *Id.* at 152-53. The package included a user guide, a sample diskette, and instructions for the installation of the software on the customers' personal computers. *Id.* at 153. Whitman testified that NYNEX placed TRACE on sale by the end of 1987. *Id.* at 159.

II. STANDARDS

A. SUMMARY JUDGMENT

Summary judgment is granted "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 a

judgment as a matter of law.” Fed. R. Civ. P. 56(c). See also *CAE Screenplates v. Heinrich Fiedler GMBH*, 224 F.3d 1308, 1316 (Fed. Cir. 2000). An issue is genuine only if the evidence is such that a reasonable jury could return a verdict for the opposing party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A disputed fact is material only if it might affect the outcome of the suit in light of the substantive law. See *id.*

The moving party has the initial burden to show the absence of genuine issues of material fact. See *Wollin v. Gondert*, 192 F.3d 616, 620 (7th Cir. 1999); *Schroeder v. Barth*, 969 F.2d 421, 423 (7th Cir. 1992). This burden does not entail producing evidence to negate claims on which the opposing party has the burden of proof. See *Green v. Whiteco Indus., Inc.*, 17 F.3d 199, 201 & n.3 (7th Cir. 1994). The party opposing a summary judgment motion bears an affirmative burden of presenting evidence that a disputed issue of material fact exists. See *Wollin*, 192 F.3d at 621; *Gonzalez v. Ingersoll Milling Mach. Co.*, 133 F.3d 1025, 1031 (7th Cir. 1998); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Scherer v. Rockwell Int'l Corp.*, 975 F.2d 356, 360 (7th Cir. 1992). The opposing party must “go beyond the pleadings” and set forth specific facts to show that a genuine issue exists. See *Wollin*, 192 F.3d at 621; *Stop-N-Go of Madison, Inc. v. Uno-Ven Co.*, 184 F.3d 672, 677 (7th Cir. 1999); *Hong v. Children’s Mem. Hosp.*, 993 F.2d 1257, 1261 (7th Cir. 1993), *cert. denied*, 511 U.S. 1005 (1994). This burden cannot be met with conclusory statements or speculation, see *Cliff v. Bd. of Sch. Comm’rs*, 42 F.3d 403, 408 (7th Cir. 1994) (citing *McDonnell v. Cournia*, 990 F.2d 963, 969 (7th Cir. 1993)); accord *Chapple v. Nat’l Starch & Chem. Co.*, 178 F.3d 501, 504 (7th Cir. 1999); *Weihaupt v. Am. Med. Ass’n*, 874 F.2d 419, 428 (7th Cir. 1989), but only with appropriate citations to relevant admissible evidence. See Local Rule 56.1; *Brasic v.*

Heinemann's Inc., Bakeries, 121 F.3d 281, 286 (7th Cir. 1997); *Foreman v. Richmond Police Dept.*, 104 F.3d 950, 957 (7th Cir. 1997); *Waldrige v. Am. Hoechst Corp.*, 24 F.3d 918, 923-24 (7th Cir. 1994). Evidence sufficient to support every essential element of the claims on which the opposing party bears the burden of proof must be cited. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In considering a summary judgment motion, a court must draw all reasonable inferences in the light most favorable to the opposing party. See *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 988 (Fed. Cir. 1999); *Wollin*, 192 F.3d at 621; *Thomas & Betts Corp. v. Panduit Corp.*, 138 F.3d 277, 291 (7th Cir. 1998); *Spraying Sys. Co. v. Delavan, Inc.*, 975 F.2d 387, 392 (7th Cir. 1992). If a reasonable fact finder could find for the opposing party, then summary judgment is inappropriate. *Stop-N-Go*, 184 F.3d at 677; *Shields Enters., Inc. v. First Chi. Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992). When the standard embraced in Rule 56(c) is met, summary judgment is mandatory. *Celotex Corp.*, 477 U.S. at 322-23; *Thomas & Betts*, 138 F.3d at 291; *Shields Enters.*, 975 F.2d at 1294.

B. PATENT INFRINGEMENT

Under 35 U.S.C. § 271(a), "whoever without authority makes, uses, offers to sell, or sells any patented invention . . . within the United States . . . infringes the patent." Reviewing whether a particular device or system infringes a patent is a two-step process. See *CAE Screenplates*, 224 F.3d at 1316; *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362 (Fed. Cir. 1999). First, a court must interpret the disputed claims, "from a study of all relevant patent documents," to determine their scope and meaning. *K-2 Corp.*, 191 F.3d

at 1362. See also *Dolly, Inc. v. Spalding & Evenflo Cos., Inc.*, 16 F.3d 394, 297 (Fed. Cir. 1994). Second, a court must determine if the accused device, system or process comes within the scope of the properly construed claims, either literally or by a substantial equivalent. See *K-2 Corp.*, 191 F.3d at 1362; *Dolly*, 16 F.3d at 397; *SmithKline Diagnostics v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988). In this case, the first phase of the infringement analysis, claim construction, occurred prior to the instant summary judgment motions.² Therefore, the Court must focus on whether Qwest's systems come within the scope of the claims as they were previously construed by the Court.

Ordinarily, to prove infringement of a patent, the plaintiff must show by a preponderance of the evidence that every limitation of the claim asserted to be infringed has been found in an accused device or process, either literally or by an equivalent. See *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 796 (Fed. Cir. 1990); *Pennwalt v. Durand-Wayland, Inc.*, 833 F.2d 931, 935 (Fed. Cir. 1987), *cert. denied*, 485 U.S. 961 (1988) & 485 U.S. 1009 (1988). Here, however, the parties disagree over the correct standard that the Court should apply to determine if Qwest infringed upon the '270 patent's systems claims. Simply put, the parties dispute whether Qwest can be held liable for the "use" of the '270 patent if it did not, by itself, practice each and every element of the '270 patent's system claims. Centillion, citing *NTP, Inc. v. Research In Motion, LTD.*, 418 F.3d 1282 (Fed. Cir. 2005), urges the Court to adopt and apply a standard that would hold

² In its Order on Claim Construction, the Court ordered the parties to brief the construction of the term "usage." The Court declines to construe "usage" because its construction of that term is not necessary to resolve these motions for summary judgment.

Qwest liable if Qwest put the '270 patent as a whole into service, i.e. exercised control and benefitted from its use as a whole. Qwest claims that *Cross Medical Products, Inc. v. Medtronic Sofamor Danek, Inc.* ("CMP"), 424 F.3d 1293 (Fed. Cir. 2005), and *BMC Resources, Inc. v. Paymenttech, L.P.* ("BMC"), 498 F.3d 1373 (2008), establish that Qwest cannot be held liable for direct infringement of a system claim if a third party is responsible for practicing some elements of a claim.

In *NTP*, the court considered the patent for the technology embodied in the Blackberry device, which included both system and method claims. NTP alleged that Research in Motion ("RIM") was liable for direct infringement under § 271(a). In the district court, RIM argued that summary judgment should be entered against NTP because the Blackberry relay component of the accused system was located in Canada; therefore, the component failed to satisfy the requirement that the infringing activity occur within the United States. *NTP*, 418 F.3d at 1314. The district court disagreed, and the jury found RIM liable for direct, induced and contributory infringement.

RIM appealed the jury verdict. However, the Federal Circuit specifically noted that RIM had not appealed the jury's conclusion that RIM's customer's "put[] into action" the patented system. *Id.* at 1317 n.13. Rather, RIM appealed the district court's decision that RIM's customers used the patent "within the United States" as required by § 271(a).

The court noted that the situs of the infringement "is wherever an offending act [of infringement] is committed." *Id.* at 1316. Moreover, the situs of the infringing act is a "purely physical occurrence[]." *Id.* The Court observed that, in terms of the infringing act of "use," other courts had interpreted the term "use" broadly. *Id.* For example, "[i]n *Bauer & Cie v. O'Donnell*, 229 U.S. 1 (1913), the Supreme Court stated that 'use,' as used in a

predecessor title 35, is a 'comprehensive term and embraces within its meaning the right to put into service any given invention.'" *Id.* at 1316-17. Moreover, the court observed that the ordinary meaning of "use" is to "put into action or service." *Id.* at 1317 (citing WEBSTER'S THIRD NEW INT'L DICT. 2523 (1993)). Finally, the court noted that following the *Bauer* decision, courts that have addressed the meaning of "use" under § 271(a) "have consistently followed the Supreme Court's lead in giving the term a broad interpretation. *Id.* (citations omitted).

Ultimately, the Court held that "[t]he use of a claimed system under section 271(a) is the place at which the system as a whole is put into service, i.e., the place where control of the system is exercised and beneficial use of the system obtained." *Id.* Because RIM's United States customers controlled the transmission of the originated information and benefitted from the exchange of that information with the Blackberry relay component in Canada, it was proper for the jury to find that use of NTP's asserted system claims occurred within the United States. *Id.*

In *CMP*, the court considered an apparatus claim directed at a fixation device for segments of the spine. 424 F.3d at 1299. As properly construed, one of the structural claim limitations required that the anchor seat be in contact with bone. *Id.* at 1310. Medtronic provided the devices to surgeons for placement; however, Medtronic itself did not make a device that included an anchor seat in contact with bone. Rather, the surgeons, with Medtronic personnel in the surgery room, connected the device to the bone. Cross-Medical argued that it was the combination of Medtronic and the surgeon that resulted in direct infringement. In other words, Cross-Medical urged the Court to hold Medtronic liable for direct infringement even though a third party, the surgeons, performed

one of the elements of the apparatus claim, namely connecting the device to the bone. The

Court stated:

In support of its argument that Medtronic directly infringes, Cross Medical cites evidence that Medtronic's representatives appear in the operating room, identify instruments used by surgeons, and thus in effect "join" the anchor seat to the bone. Cross Medical argues that the situation is analogous to those in which courts have found a party to directly infringe a method claim when a step of the claim is performed at the direction of, but not by, that party. *See, e.g., Shields v. Halliburton Co.*, 493 F.Supp. 1376, 1389 (W.D.La.1980). However, if anyone makes the claimed apparatus, it is the surgeons, who are, as far as we can tell, not agents of Medtronic. Because Medtronic does not itself make an apparatus with the "interface" portion in contact with bone, Medtronic does not directly infringe.

CMP, 424 F.3d at 1311.

Finally, in *BMC*, the Federal Circuit considered the extent to which an alleged infringer is liable for direct infringement of a method claim if it does not itself practice each step of the method. 498 F.3d at 1378-81. The Court began its analysis by acknowledging that direct infringement requires a party to perform or use each and every step or element of a claimed method or product. *Id.* at 1378. The Court continued:

When a defendant participates in or encourages infringement but does not directly infringe a patent, the normal recourse under the law is for the court to apply the standards for liability under indirect infringement. Indirect infringement requires, as a predicate, a finding that some party amongst the accused actors has committed the entire act of direct infringement. *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1272 (Fed.Cir.2004).

These rules for vicarious liability might seem to provide a loophole for a party to escape infringement by having a third party carry out one or more of the claimed steps on its behalf. [*CMP*], 424 F.3d [at]1311[.] To the contrary, the law imposes vicarious liability on a party for the acts of another in circumstances showing that the liable party controlled the conduct of the acting party. *Engle v. Dinehart*, 213 F.3d 639 (5th Cir.2000) (unpublished decision) (citing Restatement (Second) of Agency § 220 cmt. d). In the context of patent infringement, a defendant cannot thus avoid liability for direct infringement by having someone else carry out one or more of the

claimed steps on its behalf. In [*CMP*], this court refused to attribute the acts of surgeons in making the claimed apparatus to the medical device manufacturer because the medical device manufacturer representative, who appeared in the operating room and identified instruments for the surgeons, did not direct the surgeons' actions.

Id. Thus, according to the *BMC* court, the basis for the *CMP* court conclusion that Medtronic had not directly infringed was its lack of direction over the surgeons.

Centillion submits that the *NTP* court defined what constitutes "use" under § 271(a) and that, therefore, under § 271 an infringer "uses" a system for purposes of direct infringement when it controls and benefits from use of the system as a whole. Centillion argues that infringement of a system claim does not depend on whether a party practices each element of the claim, so long as the infringing party has used a system embodying all of the elements and limitations of the claim. As a result, Centillion contends that Qwest "used" the '270 because it controlled and benefitted from its use. Qwest argues that *NTP* should be strictly limited to the narrow issue of where "use" occurs under § 271(a), and not what constitutes "use." Moreover, Qwest argues that *CMP* and *BMC* clearly establish that, in order to be liable for direct infringement of the '270 patent, Qwest, by itself, must have practiced each and every element of the system claims. To the extent the law attributes the actions of a third party to an alleged infringer under *BMC*, Qwest submits that analysis only pertains to method claims.

The Court concludes that the Federal Circuit defined what constitutes "use" under § 271(a) in *NTP*. Although, as Qwest notes, the *NTP* court addressed the question of when the infringing act of "use" occurs "within the United States" under § 271(a), in order to understand where the use of a patented system occurs, the court necessarily had to establish what constitutes the infringing act of use. Therefore, by answering the question

of when use occurs within the United States, the *NTP* court implicitly defined what constitutes “use” under § 271(a). As mentioned before, the court concluded that “[t]he use of a claimed system under section 271(a) is the place at which the system as a whole is put into service, *i.e.*, the place where control of the system is exercised and beneficial use of the system obtained. *NTP*, 418 F.3d at 1317. Accordingly, the Court concludes that an infringer “uses” a system under § 271(a) when it puts the system into service or action, *i.e.* when it exercise control over, and benefits from, the system’s application.

However, to the extent Centillion suggests that under *NTP* the use of some, but not all, of the elements of a system claim is sufficient to find direct infringement if the use is “beneficial,” the Court disagrees. “Infringement requires, as it always has, a showing that a defendant has practices each and every element of the claimed invention.” *BMC*, 498 F.3d at 1380 (citing *Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 40 (1997)); see *CMP*, 424 F.3d at 1310. This requirement derives from § 271(a) itself. *Id.* “Thus, liability for infringement requires a party to make, use, sell, or offer to sell the patented invention, meaning the entire patented invention.” *NTP*, decided before *BMC* and *CMP*, did not change this requirement.

However, the question remains whether § 271(a) applies to an alleged infringer that practices some, but not all, of the elements of a system claim if it directs a third party to practice the remaining elements. Qwest argues that *CMP* and *BMC* explicitly bar a finding of direct infringement of a system claim where the defendant did not, by itself, practice each an every element of the claim. Contrary to Qwest’s belief, neither *CMP* nor *BMC* held that an alleged infringer may never be held liable if the infringer did not use each element of a claimed system. Rather, as noted in *BMC*, the court in *CMP* concluded that the plaintiff

could not satisfy its burden to show the defendant sufficiently directed the actions of a third party such that the law would attribute the third-party's action to the defendant. In other words, had the Medtronics personnel sufficiently "direct[ed] the surgeons' actions," Medtronics would have directly infringed that apparatus claim.

Therefore, the Court concludes that under *BMC*, *CMP* and *NPT*, a party is liable for direct infringement for the "use" of a system claim under § 271(a) if it, by itself or in combination with a third party directed by it, put each and every element of the system claim into service, i.e. exercised control over, and benefitted from, the application of each and every element of the system claim. *BMC*, 498 F.3d at 1378-81; *CMP*, 424 F.3d at 1311; *NPT*, 418 F.3d at 1316-17.

As to the '270 patent's method claim, "a method claim is directly infringed only if each step of the claimed method is performed." *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1328 (Fed. Cir. 2008). However, "[a] party cannot avoid infringement . . . simply by contracting out steps of a patented process to another entity." *BMC*, 498 F.3d at 1381. "Accordingly, where the actions of multiple parties combine to perform every step of a claimed method, the claim is directly infringed only if one party exercises "control or direction" over the entire process such that every step is attributable to the controlling party, i.e., the 'mastermind.'" *Muniauction*, 532 F.3d at 1329 (quoting *BMC*, 498 F.3d at 1380-81).

C. VALIDITY

By statute, a patent is presumed to be valid. 35 U.S.C. § 282. The party challenging a patent's validity must prove invalidity by clear and convincing evidence. See *Apple Computer Inc. v. Articulate Sys., Inc.*, 234 F.3d 14, 26 (Fed. Cir. 2000); *Oney v.*

Ratliff, 182 F.3d 893, 895 (Fed. Cir. 1999) (citing *Finnigan Corp. v. Int'l Trade Comm'n*, 180 F.3d 1354 (Fed. Cir. 1999)); *Am. Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1360 (Fed. Cir. 1984). In the present procedural posture, “[s]ummary judgment is inappropriate if a trier of fact applying the clear and convincing standard could find for either party.” *Oney*, 182 F.3d at 895.

An accusation of anticipation is based on the requirement that an invention be novel or new. “The novelty requirement lies at the heart of the patent System.” I DONALD S. CHISUM, CHISUM ON PATENTS § 3.01 (Rel. No. 71, Sept. 1999) (hereinafter “CHISUM ON PATENTS”). The defense of anticipation “requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee.” *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302 (Fed. Cir. 1995). See also *MEHL/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 2000); *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1349 (Fed. Cir. 1998); *Hupp v. Siroflex of Am., Inc.*, 122 F.3d 1456, 1461 (Fed. Cir. 1997). A challenger cannot prove anticipation “by combining more than one reference to show the elements of the claimed invention.” “CHISUM ON PATENTS § 3.02. Thus, a prior patent or device must contain all of the elements and limitations in the disputed patent as arranged in the patented device. See *C.R. Bard*, 157 F.3d at 1349; *Hoover Group*, 66 F.3d at 303. But, “a prior art reference may anticipate when the claim limitations not expressly found in that reference are nonetheless inherent in it.” *MEHL/Biophile Int'l*, 192 F.3d at 1365. Anticipation is a question of fact, but may be decided on summary judgment if there is no genuine issue of material fact. *Oney*, 182 F.3d at 895.

III. DISCUSSION

As previously stated, the parties filed cross motions for summary judgment on validity and infringement. The Court considers each in turn.

A. VALIDITY

Qwest asserts that NYNEX's COBRA and TRACE systems constitute invalidating prior art under 35 U.S.C. § 102(a) and (b). In response, Centillion argues, *inter alia*, that neither COBRA nor TRACE satisfies the "as specified by the user" limitation in Claims 1, 8, and 47 of the '270 patent. As discussed above, claim 1 states "said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records . . ." '270 Patent, col. 31, ll. 56-58. Similarly, claim 8 states "said date processing means generating preprocessed summary reports as specified by the user from said telecommunications usage records . . ." *Id.* col. 32, ll. 48-50. Finally, method claim 47 states "generating preprocessed summary reports as specified by the user from said individual transaction records . . ." *Id.* col. 36, ll. 22-24.

The Court construed "as specified by the user" to mean "customer selects, or makes specific, the character of." Dkt. No. 394 at 34. In addition, the Court construed "summary report" as a collection of analyzed and/or reorganized data." *Id.* at 41. Accordingly, to satisfy the '270 patent's limitations, COBRA and TRACE must have allowed NYNEX's customers to select, or make specific, the character of the collection of analyzed and/or reorganized data the customers received from NYNEX as subscribers of COBRA/TRACE.³

³ This analysis assumes that the '270 patent meets the written description and enablement requirement of 35 U.S.C. § 112, ¶ 1. See Dkt. No. 410 at 10 (concluding

Qwest asserts that certain versions of COBRA and then NYNEX's final product, TRACE, satisfy the "as specified by the user" limitation because NYNEX customers could select which of the four types of billing data—TOLL, SMDR, CSR, and OCC—on which they wanted to receive a summary report. In other words, Qwest asserts that NYNEX customers selected, or made specific, the character of the summary reports they received from NYNEX by choosing the type of billing data they wanted to receive during their initial subscription request. In addition, Qwest argues that the "as specified by the user" limitation is satisfied by COBRA and TRACE because the customers could provide a purchase order number to NYNEX.

The Court concludes that neither COBRA nor TRACE satisfies the "as specified by the user" limitations in Claims 1, 8, or 47 of the '270 patent. Therefore, COBRA and TRACE do not invalidate the '270 patent under §102. Although Qwest contends that NYNEX customers selected, or made specific, the character of their preprocessed summary reports through their initial subscription request, the record suggests that those subscription requests were merely an extension of the prior system utilized by NYNEX. As Whitman testified, prior to COBRA, NYNEX customers received billing data on paper or magnetic disk. Customers could subscribe to receive this billing data. Because Whitman thought there was a more effective and cost efficient way to supply billing data to the customer, he created COBRA, the purpose of which was to give customers billing data on disks readable by personal computer. However, as Graves' deposition testimony indicates, a customer's initial subscription, namely the decision regarding the type of billing data the

there was a genuine issue of material facts regarding whether or not the '270 patent met the written description and enablement requirements of 35 U.S.C. § 112, ¶ 1)

customer would like to receive as a COBRA customer, was merely an extension of the pre-COBRA system.

Q. Was there anything that you felt was a deficiency of TRACE at the time that you were demoing it that you wanted to continue to work on?

* * *

A. No . . . [T]he eventual capability was for people to be able to request what they wanted. So my goal was to get the basic browser as solid as possible and then to move on to the next part, which would be, okay, how do we make this so that it's subscribable, you can subscribe to what you want and you can actually tell what you would like to see, if that's possible.

Q. What do you mean by "you can subscribe to what you want," you mean the customer?

A. Yeah, the customer could subscribe to a TOLL file or an SMDR or CSR or OC&C.

Q. I see. They couldn't do that at the time of the demo?

A. They already were doing it with tapes. But at the time of the demo – you know, they had – when they subscribed – there was already a subscription system for TOLL data on the nine-track. . . So you – that was already in place. This is kind of like a – you know, this whole process is really . . . extending that process.

Pl.'s Ex. 11, Dkt. No. 614(12), at 198-99. In other words, the COBRA subscription request was merely an extension of the pre-COBRA system; the customer gave the same input to NYNEX in both the pre-COBRA system and the COBRA/TRACE systems.

In contrast, the '270 patent contemplates more than merely collecting the same call data that customers received on paper or magnetic disk and compiling it to a diskette readable by personal computer. Rather, a major component of the '270 patent, namely the data processing means, created preprocessed summary reports after input from the

customer regarding the character of those reports. The '270 patent provided the following list of example reports that the data processing means would generate:

number of calls, length, and total call cost for each accounting or project code;

number of calls, length, and total cost for day, evening and night calls for each carrier;

number of calls, length, and total cost of calls of each call type;

number of calls, length, and total cost for day, evening, and night calls to each terminating area code;

number of calls, length, and total cost for calls of each product type (i.e. carrier's marketing plan);

number of calls, length, and total cost for day, evening, and night calls from each site or location identifier; [and]

number of calls, length, and total cost for calls made from each originating station and authorization code.

'270 Patent, col. 7, ll. 49-68; col. 8, 1-3. As such, a service customer could, for example, "select, or make specific, the character of" the preprocessed summary reports it received as a subscriber to the '270 patent by choosing which of these reports, or similar reports, if any, it would like to receive on diskette. Put differently, a customer of the '270 patent could not only choose the type of billing data it would like to receive, but it could also select, or make specific, the reports that the billing data populated. Therefore, the ability of NYNEX's customers to subscribe to receive a certain type of billing data does not satisfy the "as specified by the user" limitation of the '270 patent.

Qwest argues that COBRA/TRACE permitted costumers to provide input other than the type of billing data the customer would like to receive. In support, Qwest cites the COBRA video and Whitman's deposition testimony. During the demonstration taped on

the COBRA video, the speaker noted how part of the preprocessed reports presented to the end customer directly incorporated the customer's purchase order number. When asked about this feature during his deposition, Whitman explained:

When a customer makes a transaction with the telephone company, . . . we allow them to assign an arbitrary or their own number to identify all of the activity associated with that transaction. That's helpful to customers to allocate charges back to their departments within their companies. And so the data is carried through the system until billing time when it's put out on the bill along with charges that pertain to that transaction.

Defs.' Ex. 8, Dkt. No. 607(3), at 105-06. According to Whitman, the purchase order appeared in the diskette that was given to the customer in the COBRA system. *Id.* at 106. Qwest argues that, by providing a purchase order number to NYNEX, NYNEX customers selected, or made specific, the summary report they received from NYNEX as COBRA/TRACE subscribers.

However, Qwest fails to designate any evidence that establishes actual TRACE customers submitted a purchase order number to NYNEX. Although Qwest points to the COBRA video, and Whitman's explanation of that video, as such evidence, the COBRA video was used "internally . . . in the company." Pl.'s Ex. B, Dkt. No. 659(3), at 100. Moreover, it is not clear whether NYNEX showed the video to customers, or afforded the customers the opportunity to provide a purchase order number. Accordingly, although at the time the tape was created NYNEX may have anticipated allowing customers to provide a purchase order number, Qwest has failed to designate evidence that NYNEX customers actually provided a purchase order number to NYNEX. The designated evidence only supports a finding that NYNEX customers could select the type of billing data they wished to receive from NYNEX. Therefore, there are no genuine issues of material fact regarding

whether COBRA and TRACE satisfy the “as specified by the user” limitation. Consequently, COBRA and TRACE do not invalidate independent claims 1 and 8, and 47, because COBRA and TRACE do not contain each and every limitation of those claims. See *Trintec Industries, Inc. V. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002) (“A single prior art reference anticipates a patent claim if it expressly or inherently describes each and every limitations set forth in the patent claim.”). Likewise, dependent claims 10 and 46 are also not invalid. See, e.g., *Hartness Int’l. Inc. v. Siplimatic Eng’g Co.*, 819 F.2d 1100, 1108 (Fed. Cir. 1987).

Finally, Qwest argues that COBRA and TRACE render claim 46, which depends from claim 8, obvious is under 35 U.S.C. § 103. However, “a claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” 35 U.S.C. § 112, ¶ 4. Qwest has not addressed whether COBRA and TRACE rendered claim 8's limitations obvious. In other words, Qwest has not met its initial burden to show the absence of genuine issues of material fact. See *Wollin*, 192 F.3d at 620.

In conclusion, Qwest’s Motion for Summary Judgment of Invalidity (Dkt. No. 605) is **DENIED**. Centillion’s Motion for Partial Summary Judgment (Dkt. No. 613) is **GRANTED**.

B. INFRINGEMENT

As stated above, Qwest seeks summary judgment for non-infringement on all of the accused systems. Centillion seeks summary judgment on just the eBill Companion. The Court first considers system claims 1, 8, 10, and 46. Then, the Court considers method claim 47.

1. System Claims

The Court must determine whether there are genuine issues of material facts as to whether Qwest or its customers directly infringed claims 1, 8, 10, and 46. As stated above, a party is liable for direct infringement for the “use” of a system claim under § 271(a) if it, by itself, or in combination with a third party directed by it, put each and every element of the system claim into service, i.e. exercised control over, and benefitted from, the application of each and every element of the system claim.

First, Centillion contends that Qwest directly infringes the ‘270 patent under § 271(a). The portion of the system claims relevant to the Court’s analysis state: “said personal computer data processing means being adapted to perform additional processing . . .” ‘270 Patent, col. 31, ll. 67-68, col. 32, ll. 59-60. The parties agree that “said personal computer data processing means” refers to a customer’s personal computer. In addition, the Court construed “additional processing” to mean “more action upon” or “further manipulating.” Dkt. No. 394 at 40.

Centillion submits that the accused systems satisfy the ‘270 patent’s limitation “said personal computer data processing means being adapted to perform additional processing” because the e-Bill client application, for example, is designed to adapt the customers’ personal computers, the customers download the application following Qwest’s instructions and user guide, and the customers “further manipulate” the billing data they receive from Qwest. However, as the Court noted earlier, as a general rule, to hold Qwest liable for direct infringement Centillion must demonstrate that Qwest, by itself, practiced each and every limitation of the system claim. Here, however, Qwest relies on its customers to satisfy this limitation. Although the eBill client application may have been designed to adapt

the customer's personal computer, the designated evidence demonstrates that it does not actually adapt the customer's computer until the customer executes the application. Moreover, Qwest does not control whether its customers load the Logic or eBill Companion client applications on their personal computers. Finally, although the Support Manual indicates that Qwest personnel may have the capability to log in a customer's account, the record does not contain any evidence that Qwest personnel actually performed this service. In other words, Centillion has failed to raise an issue of fact that Qwest personnel adapted a customer's personal computer for additional processing as claims 1, 8, 10 and 46 contemplate.

Of course, an exception to the general rule that a party must, by itself, practice each and every element of a patent claim exists where the party directed a third party to reduce to practice the remaining elements of a claim. Accordingly, Centillion must demonstrate a genuine issue of material fact as to whether Qwest sufficiently "directed" its customers to "adapt [their personal computers] to perform additional processing on said individual transaction records." '270 Patent, col. 31, ll. 67-68, col. 32, ll. 59-60. However, Centillion cannot meet this burden. Centillion admits Qwest's customers are not obligated or contractually bound to perform additional processing on individual transaction records provided by Qwest. Rather, Qwest's customers independently determine whether or not to perform additional processing on individual transaction records by Qwest. Moreover, Qwest does not control whether its customers load the Logic or eBill Companion client applications on their personal computers. Therefore, the Court concludes that Centillion has failed to raise genuine issues of material fact regarding whether Qwest directly infringed independent claims 1 and 8, and dependent claims 10 and 46.

Likewise, Centillion has failed to demonstrate the Qwest's customers directly infringed claims 1, 8, 10, and 46. Centillion has not demonstrated, for example, that Qwest's customers directed or controlled the "date processing means" of the accused systems' "back end." Moreover, Centillion has not demonstrated that Qwest's customers sufficiently directed Qwest personnel to practice the limitations of the system claims that the customers did not themselves practice. Rather, Centillion argues that Qwest's customers directly infringed the '270 patent because they benefitted from its use. However, as the Court concluded above, such a finding is insufficient to establish direction infringement under § 271(a).

Accordingly, the Court concludes that Centillion has failed to raise a genuine issue of material fact regarding whether Qwest or its customers directly infringed claims 1, 8, 10, and 46 under § 271(a). Consequently, without a finding of direct infringement, Qwest is not liable under theories of indirect infringement. See *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1272 (Fed. Cir. 2004) ("Indirect infringement, whether inducement to infringe or contributory infringement, can only arise in the presence of direct infringement . . .").

Therefore, Qwest's Motion for Summary Judgment of Non-Infringement (Dkt. No. 617) on system claims 1, 8, 10 and 46 of the '270 patent is **GRANTED**. Centillion's Motion for Summary Judgment of Infringement (Dkt. No. 616) on those claims is **DENIED**.

2. Method Claim

As stated above, “a method claim is directly infringed only if each step of the claimed method is performed.” *Muniauction*, 532 F.3d at 1328. Moreover, “where the actions of multiple parties combine to perform every step of a claimed method, the claim is directly infringed only if one party exercises “control or direction” over the entire process such that every step is attributable to the controlling party, i.e., the ‘mastermind.’” *Muniauction*, 532 F.3d at 1329 (quoting *BMC*, 498 F.3d at 1380-81).

The relevant portion of claim 47 states: “performing additional processing of said individual transaction records on said at least one personal computer data processing means utilizing said summary reports for expedited retrieval of data[.]” Centillion claims that Qwest performs each step of claim 47 when Qwest Alternate Media Support Group personnel log in as an eBill Companion user to provide support or training to a customer. However, although the Support Manual indicates that Qwest personnel may have the capability to log in a customer’s account, the record does not contain any evidence that Qwest personnel actually performed this service. Therefore, Centillion has failed to designate evidence that demonstrates Qwest performed the “additional processing” step of claim 47.

Centillion argues that Qwest exerts sufficient “direction or control” over the performance of the additional processing step of claim 47 to hold it liable as a “mastermind.” However, although Qwest provides the client application used to perform additional processing, Qwest’s customers are required to execute the application before it adapts their personal computer. In addition, Centillion admits that Qwest customers are not obligated or contractually bound to perform additional processing on individual

transaction records provided by Qwest. Rather, Qwest's customers independently determine whether or not to perform additional processing on individual transaction records. Ultimately, there is no evidence upon which a finder of fact could reasonably rely to conclude Qwest constitutes a "mastermind" under *Muniauction*. 532 F.3d at 1329. Finally, Centillion admits that Qwest's customers do not exercise control or direction over the performance of every step of method claim 47 of the '270 patent. Pl.'s Br., Dkt. No. 655 at 17.

The Court concludes that there are no genuine issues of material fact, and that Qwest is entitled to judgment as a matter of law on Centillion's claims for infringement of claim 47. Therefore, Qwest's Motion for Summary Judgment of Non-infringement (Dkt. No. 617) on claim 47 is **GRANTED**. Centillion's Motion for Summary Judgment of Infringement (Dkt. No. 616) on claim 47 is **DENIED**.

IV. CONCLUSION

For the foregoing reasons, plaintiff/consolidated defendant's, Centillion Data System, LLC, and consolidated defendant's, CTI Group (Holdings), Inc., Motion for Partial Summary Judgment (Dkt. No. 613) is **GRANTED** and Motion for Partial Summary Judgment of Infringement (Dkt. No. 616) is **DENIED**. Defendants/consolidated plaintiffs', Qwest Communications International, Inc. and Qwest Corporation, Motion for Summary Judgment of Invalidity of the '270 Patent is **DENIED**; Motion for Summary Judgment of Noninfringement is **GRANTED**, and Motion to Strike (Dkt. No. 721) is **DENIED**. All other pending motions are **DENIED AS MOOT**. The Court will enter judgment accordingly.

IT IS SO ORDERED this 29th day of October, 2009.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distribution attached.

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UNITED STATES DISTRICT COURT

for the Southern District of Indiana

Centillion Data Systems, LLC v. Qwest Communications International, Inc., et al. Case No.: 1:04-cv-0073 LJM-DML

Bill of Costs

Judgment having been entered in the above entitled 11/03/2009 against Centillion Data Systems, LLC, the Clerk is requested to tax the following as costs:

Table with 2 columns: Description of costs and Amount. Includes categories like Fees of the Clerk, Fees for service of summons and subpoena, Fees for printed or electronically recorded transcripts, Fees and disbursements for printing, Fees for witnesses, Fees for exemplification, Docket fees, Costs as shown on Mandate of Court of Appeals, Compensation of court-appointed experts, Compensation of interpreters, and Other costs. Total amount is \$251,245.95.

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

Declaration

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

- Electronic service by e-mail as set forth below and/or.
Conventional service by first class mail, postage prepaid as set forth below.

s/ Attorney: /s/ Vincent J. Belusko

Name of Morrison & Foerster LLP

For: Qwest Communications International, Inc., Qwest Corporation, and Qwest Communications Corporation Date: 11/17/2009

Costs are taxed in the amount of and included in the judgment.

Clerk of Court By: Deputy Clerk Date

AO 133 (Rev. 11/08) Bill of Costs

UNITED STATES DISTRICT COURT

Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)							
NAME, CITY AND STATE OF RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
						TOTAL	\$0.00

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:
 "Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:

RULE 54(d)(1)

Costs Other than Attorneys' Fees.

Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 1 day's notice. On motion served within the next 5 days, the court may review the clerk's action

RULE 6

(d) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

RULE 58(e)

Cost or Fee Awards:

Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

CERTIFICATE OF SERVICE

I certify that on November 17, 2009, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system:

<p>Phillip Fowler BINGHAM McHALE, LLP 2700 West Market Tower 10 West Market Street Indianapolis, IN 46204-4900 pfowler@binghammchale.com</p> <p>Victor Wigman Paul Honigberg Michael D. White Keeto Sabharwhal Alan Freeman Nirav N. Desai BLANK ROME, LLP 600 New Hampshire Avenue, N.W. Washington, DC 20037 white@blankrome.com wigman@blankrome.com honigberg@blankrome.com sabharwhal@blankrome.com freeman@blankrome.com desai@blankrome.com</p> <p>Kenneth L. Bressler BLANK ROME LLP The Chrysler Building 405 Lexington Avenue New York, NY 10174 KBressler@Blankrome.com</p>	<p><i>Counsel for Plaintiff, Centillion Data Systems, LLC</i></p>
--	---

/s/ Vincent J. Belusko
Vincent J. Belusko

ATTACHMENT A
TRANSCRIPTION COSTS CHART

*Centillion v. Qwest Corporation, et al.***Court Reporter/Transcription Costs**

Date	Vendor/Provider	Invoice #	Description	Amount
2006 COSTS				
05/08/2006	Capital Reporting Co.	4529259	Deposition transcript of Venkat Ashok taken 04/26/06	\$732.25
06/01/2006	Capital Reporting Co.	4529259	Deposition transcript of Venkat Ashok taken 04/26/06, two sets of DVDs	\$530.00
06/08/2006	Capital Reporting Co.	4544332	Deposition transcript of Thomas Moynihan taken 05/18/06	\$699.00
07/19/2006	Capital Reporting Co.	4581650	Deposition transcript of Venkat Ashok taken 04/26/06	\$315.00
11/29/2006	Connor & Associates	4598458	Transcript of William M. Miller taken 11/16/06	\$1,038.30
11/30/2006	Connor & Associates	4598458	Transcript of John M. Cauffman taken 11/17/06	\$535.45
2006 SUBTOTAL:				\$3,850.00
2007 COSTS				
03/13/2007	Capital Reporting Co.	4614882	Transcript of Eleanor Sora Rim Doman taken 02/21/07	\$1,249.50
03/15/2007	Capital Reporting Co.	4614882	Transcript of Rick Wertheimer taken 02/22/07	\$1,110.00
03/16/2007	Capital Reporting Co.	4614882	Transcript of Steve Gurtz taken 02/27/07	\$1,299.65
03/16/2007	Capital Reporting Co.	4614882	Transcript of Brian Leining taken 02/28/07	\$741.35
03/16/2007	Capital Reporting Co.	4614882	Transcript of Venkat Ashok taken 03/01/07	\$1,466.80
03/16/2007	Capital Reporting Co.	4623662	Transcript of Eleanor Sora Rim Doman taken 02/21/07	\$259.70
03/16/2007	Capital Reporting Co.	4614882	Transcript of Venkat Ashok taken 03/01/07	\$425.00
2007 SUBTOTAL:				\$6,552.00

2008 COSTS				
10/16/2008	Capital Reporting	4774308	Deposition of Lucy Diaz and David LeFond (Maricopa County Witnesses)	\$433.30
11/30/2008	TSG Reporting, Inc.	4798298	Original & 1 Certified Copy of Deposition of John Birbeck (11/11/2008)	\$2,041.30
11/30/2008	TSG Reporting, Inc.	4798298	Original & 1 Certified Copy of Deposition of John Birbeck (11/12/2008)	\$1537.60
11/30/2008	TSG Reporting, Inc.	4798298	Video Deposition of John Birbeck (11/11/2008)	\$1,065.00
11/30/2008	TSG Reporting, Inc.	4798298	Video Deposition of John Birbeck (11/12/2008)	\$815.00
11/30/2008	TSG Reporting, Inc.	4798298	Original & 1 Certified Copy of Deposition of John Cauffman (11/13/2008)	\$745.00
11/30/2008	TSG Reporting, Inc.	4798298	Original & 1 Certified Copy of Deposition of John Cauffman (11/14/2008)	\$1,038.70
11/30/2008	TSG Reporting, Inc.	4798298	Original and 1 certified transcript of John Cauffman on 11/13/2008	\$1,084.70
11/30/2008	TSG Reporting, Inc.	4798298	Video of Deposition of John Cauffman (11/14/2008)	\$745.00
12/04/2008	Byers & Anderson	4806580	Deposition of Thomas Moynihan on December 4, 2008	\$1,058.20
12/05/2008	Byers & Anderson	4806580	Deposition of Thomas Moynihan, Volume II, on December 5, 2008	88.50
12/11/2008	Capital Reporting Co.	4798298	1 Certified Copy of Deposition of Venkat Ashok, (11/21/2008)	\$776.50
12/11/2008	Capital Reporting Co.	4798298	1 Certified Copy of Deposition of Venkat Ashok (11/19/2008)	\$1,915.25
12/11/2008	Capital Reporting Co.	4798298	1 Certified Copy of Deposition of Venkat Ashok volume II, rough ASCII, exhibits, real time	\$1,307.50
12/15/2008	TSG Reporting, Inc.	4798298	Video Deposition of Michael Graves (11/24/2008)	\$1,105.00

12/15/2008	TSG Reporting, Inc.	4798298	Original and 1 Certified Copy of Deposition of Michael Graves (11/24/2008)	\$2,674.00
12/16/2008	Capital Reporting Co.	4798298	Video Deposition of Venkat Ashok (Video 16) (11/19/2008)	\$525.00
12/17/2008	Capital Reporting Co.	4798298	Video Deposition of Venkat Ashok (Video 6) (11/20/2008)	\$450.00
12/22/2008	Capital Reporting Co.	4798298	Video Deposition of Venkat Ashok (Video 3) (11/21/2008)	\$260.00
12/31/2008	TSG Reporting, Inc.	4832400	Original and 1 Certified Copy of Deposition of James Coyle (12/11/2008)	\$3,081.40
12/31/2008	TSG Reporting, Inc.	4832400	Video Deposition of James Coyle (12/11/2008)	\$1,090.00
12/31/2008	TSG Reporting, Inc.	4832400	Original and 1 Certified Transcript of Deposition of Ed Varley (12/15/2008)	\$2,404.05
12/31/2008	TSG Reporting, Inc.	4832400	Original and 1 Certified Transcript of Deposition of William Miller (12/10/2008)	\$1,536.70
12/31/2008	TSG Reporting, Inc.	4832400	Original and 1 Certified Transcript of Deposition of William Miller (12/09/2008)	\$1,827.80
12/31/2008	TSG Reporting, Inc.	4832400	Original and 1 Certified Transcript, of Deposition of Michael Graves (12/09/2008)	\$1,013.10
12/31/2008	TSG Reporting, Inc.	4832400	Video deposition of Michael Graves (12/09/2008)	\$540.00
12/31/2008	TSG Reporting, Inc.	4832400	Certified deposition transcript of Michael Graves (12/09/2008(exhibits only))	\$2,059.75
12/31/2008	TSG Reporting, Inc.	4832400	Video deposition of Ed Varley (12/15/2008)	\$750.00
12/31/2008	TSG Reporting, Inc.	4832400	Certified MPEG (video) of Deposition of Michael Graves (12/09/2008)	\$165.00
2008 SUBTOTAL:				\$34,133.35

2009 COSTS				
03/13/2009	TSG Reporting, Inc.	4832400	Videographer, certified – MPEG – Complimentary	\$1,237.50
03/13/2009	TSG Reporting, Inc.		Original and 1 Certified Copy of Deposition of Bruce Whitman (02/11/2009)	\$3,740.60
03/31/2009	Capital Reporting Co.	4832400	Certified copy of transcript of Paul Meyer	\$2,110.25
04/02/2009	Capital Reporting Co.	4832400	Certified copy of transcript of Bradley Walton	\$2,298.25
04/02/2009	Capital Reporting Co.	4832400	Certified copy of transcript of Steven Kursh	\$2,401.85
04/09/2009	Capital Reporting Co.	4832400	Steven Kursh, DVD/CD copy	\$450.00
04/09/2009	Capital Reporting Co.	4832400	Bradley Walton (Video 4), DVD/CD copy	\$330.00
04/09/2009	TSG Reporting, Inc.	4832400	Videographer – 1 st two hours, videographer – each additional hours, certified MPEG	\$1,240.00
04/09/2009	TSG Reporting, Inc.	4832400	Original and 1 certified transcript, original transcript – 2-day delivery, evening pages, interactive real time, rough ASCII, reporter appearance fee	\$2,717.75
04/09/2009	TSG Reporting, Inc.	4832400	Original and 1 certified transcript of deposition of Vincent Thomas (03/19/2009)	\$2,566.55
04/09/2009	TSG Reporting, Inc.	4832400	Videosynch/tape of deposition of Vincent Thomas (03/19/2009)	\$1,720.00
04/20/2009	TSG Reporting, Inc.	4832400	Video Deposition of Jack Grimes	\$1,230.00
04/20/2009	TSG Reporting, Inc.	4832400	Original and 1 Certified Copy of Deposition of Jack Grimes	\$3,980.60
04/23/2009	Capital Reporting Co.	4832400	Paul Meyer (video 3), DVD/CD: copy w/ MPEG files, shipping	\$255.00
07/14/2009	Capital Reporting Co.	4855898	DVD/CD of Deposition of Bradley Walton (03/20/2009)	\$325.00
08/28/2009	TSG Reporting, Inc.	4863814	Videosynch/tape of depositions of Michael Graves (Nov.	\$1,540.00

			24, Dec. 9, 2008), James Coyle (Dec. 11, 2008), Ed Varley (Dec. 15, 2008) and Bruce Whitman (Feb. 11, 2009)	
09/21/2009	TSG Reporting, Inc.	4871867	Videosynch/tape of depositions of John Birbeck (Nov. 11 and 12, 2008) and John Cauffman (November 13 and 14, 2008)	\$1,240.00
				2009 SUBTOTAL: \$29,383.35
				TOTAL TRANSCRIPTION COSTS: \$73,918.70

ATTACHMENT B

PHOTOCOPY, IMAGING, AND
PRINTING COSTS CHART

*Centillion v. Qwest Corporation, et al.***Photocopy/Imaging/Printing Costs**

Date	Vendor/Provider	Invoice #¹	Description	Amount
2004 Costs				
10/26/2004	Ikon Document Services	DEN068127	Litigation photocopies	\$191.35
11/10/2004	Ikon Document Services	DEN068334	Heavy litigation photocopies	\$311.81
08/18/2004	In-house copying (Gallegos)	N/A	Photocopies	\$211.30
2004 SUBTOTAL:				\$714.46
2005 Costs				
10/17/2005	Ikon Office Solutions	LOS05100252	OCR documents necessary for printing; creation of CD Master from photocopies	\$656.04
10/18/2005	Ikon Office Solutions	LOS05100254	Convert native files to TIFF for printing; creation of CD Master from photocopies	\$33,614.26
2005 SUBTOTAL:				\$34,270.30
2006 Costs				
04/19/2006	Discovery Specialists	200601	Conversion and printing of TIFF files; Bates Labeling and Confidentiality Labeling of Documents for printing and photocopying; Creation of DVDs; Database Management	\$17,440.28
11/14/2006	In-house copying (Belusko)	N/A	Photocopies	\$321.40
2006 SUBTOTAL:				\$17,761.68

¹ Invoice number provided only if outside vendor used. Invoice number can also refer to Morrison & Foerster invoice number.

Date	Vendor/Provider	Invoice # ¹	Description	Amount
2007 Costs				
03/20/2007	In-house copying (Roybal)	N/A	Photocopies	\$106.65
05/17/2007	Document Technologies, Inc.	4623662	Scanning charges for 5/17/07 (necessary for printing)	\$107.75
05/21/2007	Document Technologies, Inc.	4640449	Scanning (necessary for printing)	\$347.71
10/19/2007	Legal Reprographics, Inc.	4696476	Scanning and Bates labeling of production of documents from Centillon Document Repository	\$2,919.59
2007 SUBTOTAL: \$3,481.70				
2008 Costs				
03/13/2008	Document Technologies	388624	Scanning, PDF File Conversion; Creation of CD Master	\$74.85
03/14/2008	Document Technologies	388872	Scanning, Blowbacks, IMG-Folder Code	\$139.07
03/19/2008	Discovery Specialists, Inc.	4712340	Processing (necessary for printing and photocopying of document production); unpacking PSTs and zips, separating out media files, conversion to TIFF files, bates labeling and airfare to SF	\$1,943.22
04/23/2008	Document Technologies	397325	Scanning, OCR, Creation of CD Master, CD/Floppy Duplication	\$200.04
04/25/2008	Discovery Specialists, Inc.	4721458	Processing (necessary for printing and photocopying of document production)-- unpacking PSTs and zips, separating out media files, conversion to TIFF files, bates labeling and confidentiality stamping, project management, DVDs created to return finished project.	\$5,200.63
04/28/2008	Document Technologies	398401	Scanning, IMG-OCR, Creation of CD Master	\$591.49
05/14/2008	Document Technologies	402125	Scanning, PDF File Conversion; IMG-OCR, Creation	\$146.37

Date	Vendor/Provider	Invoice #	Description	Amount
			of CD Master	
05/23/2008	Document Technologies	404154	Scanning, IMG-OCR, Creation of CD Master	\$358.24
06/02/2008	LA Best Photocopies, Inc.	4739585	Black and white scan to single tiff with concordance load file master CD.	\$726.63
06/20/2008	Legal Reprographics, Inc.	4806580	Print materials for expert review.	\$987.96
06/25/2008	Discovery Specialists, Inc.	4748850	Processing (necessary for printing and photocopying of document production)-- unpacking PSTs and zips, separating out media files, OCR and conversion to TIFF files, bates labeling and confidentiality stamping.	\$73,816.81
07/14/2008	Discovery Specialists, Inc.	4748850	Processing (necessary for printing and photocopying of document production)-- unpacking PSTs and zips, separating out media files, OCR and conversion to TIFF files, bates labeling and confidentiality stamping.	\$14,765.06
07/24/2008	Document Technologies	416039	Scanning (necessary for printing), Creation of CD Master, IMG-OCR	\$551.07
09/25/2008	Kroll Ontrack	4763467	CF EMG media conversion -- CD/DVD	\$398.10
10/02/2008	Legal Reprographics Inc.	4774308	Print document received from opposing counsel on CD	\$159.36
10/21/2008	Discovery Specialists, LLC	4798298	Machine creation of document privilege log and privilege database and transferred through secure RTP	\$1625.00
10/28/2008	Ikon Office Solutions	4806580	CD/DVD Duplication, CD/DVD master, OCR, bates capture, image capture D-heavy	\$5,434.39
11/07/2008	LA Best Photocopies	4785006	Black and White printout; download from FTP site	\$403.56

Date	Vendor/Provider	Invoice # ¹	Description	Amount
11/08/2008	LA Best Photocopies	4785006	Heavy litigation photocopies, GBC bind and side tabs	\$2,261.56
11/11/2008	LA Best Photocopies	4785006	Black & white photocopies	\$151.01
11/13/2008	Dominion Digital Services, LLC	4815679	Medium litigation, pre-printed tabs, scanning medium litigation and export/load file creation Cd and sales tax (necessary for printing out of exhibits)	\$869.43
11/17/2008	Legal Reprographics, Inc.	4785006	Print document for deposition preparation	\$2,799.99
12/04/2008	LA Best Photocopies, Inc.	4798298	Black and white photocopies	\$689.88
12/08/2008	In-house copying (Miller)	N/A	Photocopies	\$167.65
12/12/2008	In-house copying (Roybal)	N/A	Photocopies	\$194.25
12/28/08	Iris Data Services, LLC	4823575	Black & Whites, Blowbacks	\$409.68
2008 SUBTOTAL: \$115,065.30				
2009 Costs				
01/12/2009	Legal Reprographics, Inc.	4806580	PDF of document made for expert review	\$931.82
01/15/2009	LA Best Photocopies, Inc.	4806580	Black & white printout from disks with staple	\$1,080.98
01/16/2009	Legal Reprographics, Inc.	4806580	Print material for expert review	\$295.26
02/09/2009	In-house copying (LaVier)	N/A	Color photocopies	\$1,024.10
03/07/2009	LA Best Photocopies, Inc.	4823575	Manila folder with label (concurrent with photocopying of exhibits for deposition preparation)	\$316.09
03/10/2009	LA Best Photocopies, Inc.	4823575	Black and white photocopies, manila folder with label (necessary for photocopies of exhibits for deposition preparation)	\$1,158.19
03/17/2009	In-house copying (Roybal)	N/A	Photocopies	\$110.70
05/13/2009	In-house copying (Monroy)	N/A	Photocopies	\$151.15

Date	Vendor/Provider	Invoice # ¹	Description	Amount
08/05/2009	In-house copying (Roybal)	N/A	Color photocopies	\$157.50
08/19/2009	In-house copying (Monroy)	N/A	Photocopies	\$146.40
10/22/2009	In-house copying (Monroy)	N/A	Color photocopies	\$451.50
2009 SUBTOTAL:				\$5,823.69
TOTAL PHOTOCOPYING, SCANNING & PRINTING COSTS: \$177,117.13				

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-cv-073-LJM-DML
)	
Plaintiff,)	
)	
v.)	
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC., and QWEST)	
CORPORATION,)	
)	
Defendants.)	
)	
QWEST CORPORATION; QWEST	)	Case No. 1:04-cv-2076
COMMUNICATIONS CORPORATION	)	[Consolidated with above]
)	
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC)	
)	
Consolidated Defendant.)	
)	

NOTICE OF APPEAL

Notice is hereby given that the Plaintiff, Centillion Data Systems, LLC, hereby appeals to the United States Court of Appeals for the Federal Circuit from the:

1. Entry of Judgment entered in this action on November 3, 2009 (Dkt. No. 829) (Exhibit A hereto), and from all related prior decisions and orders, including
2. The Court's Amended Order that, *inter alia*, denied Plaintiffs' Motion for Partial Summary Judgment of Infringement (Dkt. No. 616) and granted Defendants'

Motion for Summary Judgment of Noninfringement (Dkt. No. 617), entered in
this action on October 29, 2009 (Dkt. No. 828) (Exhibit B hereto).

DATED: November 30, 2009

Respectfully submitted,

/s/ Phillip J. Fowler

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Phillip J. Fowler

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CERTIFICATE OF SERVICE

I certify that on November 30, 2009, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

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/s/ Phillip J. Fowler

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff,)	
)	
vs.	)	1:04-cv-0073-LJM-DML
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	
_____)	
)	
QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
)	
vs.	)	1:04-cv-2076
	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC and)	
CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

ENTRY OF JUDGMENT

Through an Order dated September 22, 2009, this Court granted defendants/consolidated plaintiffs', Qwest Communications International, Inc. and Qwest Corporation ("Defendants"), Motion for Partial Summary Judgment. The Court concluded that 28 U.S.C. § 1498 barred plaintiff/consolidated defendant's, Centillion Data System, LLC, and consolidated defendant's, CTI Group (Holdings), Inc. (collectively, "Plaintiffs"), patent infringement claims based upon Defendants' performance under certain government contracts.

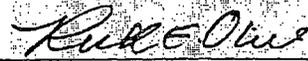
Through an Order dated October 29, 2009, the Court granted Plaintiffs' Motion for Partial Summary Judgment; denied Plaintiffs' Motion for Partial Summary Judgment of

Infringement; denied Defendants' Motion for Summary Judgment of Invalidity of the '270 Patent, and granted Defendants' Motion for Summary Judgment of Noninfringement. In the Order, the Court granted summary judgment in favor of Plaintiffs on Defendants' claim that prior art invalidated the patent-in-suit, U.S. Patent 5,287,270. In addition, the Court granted summary judgment in favor of Defendants on their claim of noninfringement. Therefore, the patent infringement claims brought by plaintiff/consolidated defendant's, Centillion Data System, LLC, and consolidated defendant's, CTI Group (Holdings), Inc., are **DISMISSED** with prejudice. Plaintiffs shall take nothing by way of their complaints.

IT IS SO ORDERED this 3rd day of November, 2009.


LARRY J. MCKINNEY JUDGE
United States District Court
Southern District of Indiana

LAURA A. BRIGGS, CLERK
United States District Court
Southern District of Indiana

By: 
Deputy Clerk

Distribution attached.

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Laura A Case

From: insd_cmecf@insd.uscourts.gov
Sent: Tuesday, November 03, 2009 4:45 PM
To: e-filer@insd.uscourts.gov
Subject: Activity in Case 1:04-cv-00073-LJM-DML CENTILLION DATA SYSTEMS, LLC v. BELLSOUTH CORPORATION et al Closed Judgment

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U.S. District Court
Southern District of Indiana
Office of the Clerk
(317)229-3700
www.insd.uscourts.gov

Notice of Electronic Filing

The following transaction was entered on 11/3/2009 at 4:45 PM EST and filed on 11/3/2009 .
Case Name: CENTILLION DATA SYSTEMS, LLC v. BELLSOUTH CORPORATION et al
Case Number: 1:04-cv-73
Filer:
WARNING: CASE CLOSED on 11/03/2009
Document Number: 829

Docket Text:
CLOSED JUDGMENT - The patent infringement claims brought by plaintiff/consolidated defendant's, Centillion Data System, LLC, and consolidated defendant's, CTI Group (Holdings), Inc., are DISMISSED with prejudice. Plaintiffs shall take nothing by way of their complaints. Signed by Judge Larry J. McKinney on 11/3/2009.(TRG)

1:04-cv-73 Notice has been electronically mailed to:

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11/3/2009

A1303

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1:04-cv-73 Notice has not been electronically mailed to:

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Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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b3fcc744d60fe624f96bc4578a2653686ef45e4ace924b7682aafbfe2b]]

11/3/2009

A1304

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff,)	
)	
vs.	)	1:04-cv-0073-LJM-DML
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	
_____)	
)	
QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
)	
vs.	)	1:04-cv-2076
	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC and)	
CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

AMENDED ORDER

This matter comes before the Court on the parties' cross motions for summary judgment pursuant to Federal Rule of Civil Procedure 56(c). In this action, plaintiff/consolidated defendant, Centillion Data Systems, LLC, and consolidated defendant, CTI Group (Holdings), INC. (collectively, "Centillion"), assert that defendants/consolidated plaintiffs, Qwest Communications International, Inc. and Qwest Corporation (collectively, "Qwest"), infringed upon their patent, U.S. Patent No. 5,287,270, Feb. 15, 1994 (the "'270 patent"). Qwest asserts that the '270 patent is invalid. Specifically, it asserts that technology developed and allegedly sold by Verizon, formerly NYNEX, anticipates the '270

patent and renders that patent obvious. Finally, Qwest asserts that the accused applications do not infringe the '270 patent.

Both Centillion and Qwest have moved for summary judgment on Qwest's claim of patent invalidity. In addition, Qwest has moved for summary judgment of non-infringement regarding all of the accused applications. Finally, Centillion has moved for summary judgment of infringement on the accused e-Bill Companion application. The parties have fully briefed their motions¹ and the Court is duly advised. The Court rules as follows.

I. FACTUAL & PROCEDURAL BACKGROUND

A. THE '270 PATENT

The Patent & Trademark Office ("PTO") issued the '270 patent on February 15, 1994, to Compucom Communications Corporation ("Compucom"). Pl.'s Ex. 1 (the '270 patent), Dkt. No. 623(2)-(3). In 1994, Compucom changed its name to Centillion Data Systems, and on February 12, 2001, it merged with CTI Group (Holdings), Inc. ("CTI Group"). As part of the merger, ownership of the '270 patent was transferred from Centillion Data System, Inc. to Centillion Data Systems, LLC. Pl.'s Br. at ¶ 2, Dkt. No. 623; Def.'s Resp. at 3; Dkt. No. 644 (admitting the allegations in paragraph 2 of Centillion's statement of material facts).

The '270 patent is directed to billing systems that may be utilized by a service customer to manipulate usage and cost information from a service provider, such as a telecommunications company or credit card company. '270 Patent, col. 1, l. 15-20.

¹ Qwest's Motion to Strike Portions of Centillion's Surreply (Dkt. No. 721) is **DENIED**.

According to the '270 patent, increased communication between companies and their clients have increased the need for companies to analyze the costs associated with this communication in an effort to minimize those costs and to allocate them properly. *Id.* Col. 1, l. 35, to col. 2, l. 7. Prior to the system described by the '270 patented invention, methods used to manipulate telecommunications data, in particular, were hampered by paper billing itemized by a call-originating station. *Id.* Col. 2, ll. 8-17. Former processing methods included non-automated methods of hand sorting data; semi-automated methods of manual key-punching or scanning of the paper bill into a computer system; automated methods based on machine-readable tapes from the service provider that contained limited information, or customer-based recording equipment for providing estimated costs. *Id.* Col. 2, ll. 18-57. However, all of these data collection methods had problems. *Id.*

According to the '270 patent, these problems created the need "for a system which provides to large-volume telecommunications customers the ability to conveniently and affordably analyze and manipulate call-detail and other telecommunications transaction information by computer, and which provides results which exactly correspond with the information printed on the customer's paper bill." *Id.* col. 2, ll. 58-64.

The '270 patented invention purports to solve this problem through a system that combines "standard processing hardware and specially designed software for distributing to . . . service customers . . . bills . . . on diskettes compatible with commonly available small and inexpensive personal computers for customer-directed display and in-depth analysis." *Id.* col. 2, l. 67, to col. 3, l. 6. The invention includes two major aspects:

One aspect of the invention includes an application software package, capable of running on a small computer (such as an IBM Personal Computer or compatible computer), which under the direction of the user can:

1. display the telephone bill (or selected subsets thereof) in its ordinary (paper-like) format;
2. display the bill (or selected subset thereof) sorted in non-conventional order (e.g. call detail records sorted by length of call);
3. display a variety of preprocessed summary reports and graphs useful in analyzing telecommunications costs; and
4. display non-preprocessed reports according to user-formulated ad-hoc queries.

* * *

Another aspect of the invention involves the use of appropriate method steps and apparatus and control software for obtaining appropriate billing information from carriers and physically rearranging this information in such a manner that it is optimally pre-processed and reformatted into a form appropriate for efficient and rapid use in subscribers' personal computers, and writing the information in this format on compatible diskettes containing [sic] for distribution to subscribers.

These functions may be performed by a third party processor engaged in the business of providing such services to service providers and their subscribers, or by the provider itself or perhaps even by a large corporate subscriber.

Id. col. 3, l. 34, to col. 4, l. 2. According to the '270 patent, the second aspect of the invention mentioned above produces the following summary reports:

- number of calls, length, and total call cost for each accounting or project code;
- number of calls, length, and total cost for day, evening and night calls for each carrier;
- number of calls, length, and total cost of calls of each call type;
- number of calls, length, and total cost for day, evening, and night calls to each terminating area code;
- number of calls, length, and total cost for calls of each product type (i.e. carrier's marketing plan);

number of calls, length, and total cost for day, evening, and night calls from each site or location identifier; [and]

number of calls, length, and total cost for calls made from each originating station and authorization code.

Id. col. 7, ll. 49-68, to col. 8, ll. 1-3.

Centillion asserts that the accused applications infringe claims 1, 8, 10, 46, and 47 of the '270 patent. Those claims read:

1. A system for presenting information concerning the actual cost of a service provided to a user by a service provider, said system comprising:

storage means for storing individual transaction records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction records from said storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, and manipulation and display on a personal computer data processing means;

means for transferring said individual transaction records including said summary reports from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said individual transaction records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said selected records including said exact charges actually billed to said user.

* * *

8. A system for presenting, under control of a user, usage and actual cost information relating to telecommunications service provided to said user by a telecommunications service provider, said system comprising:

telecommunications service provider storage means for storing records prepared by a telecommunications service provider related to telecommunications usage for one or more telecommunications subscribers including said user, and the exact charges actually billed to said user by said service provider for said usage;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of the records from said service provider storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said telecommunications usage records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said telecommunications usage records including said summary reports from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said telecommunications records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said telecommunications usage records including said exact charges billed to said user.

* * *

10. A system as in claim 8 wherein said selected records relating to telecommunications usage and cost comprise at least one telecommunications call detail record corresponding to a unique telecommunications call to be billed to said subscriber, said call having a length determined by said telecommunications carrier.

* * *

46. A system as in claim 8 wherein an information interchange media means in the form of a data communications line is employed for transferring said selected records from said data processing means to said personal computer data processing means.

47. A method for presenting information on a personal computer data processing means concerning the actual cost of a service provided to a user by a service provider, said method comprising:

storing individual transaction records prepared by said service provider on a storage means, said transaction records relating to individual service transactions for at least one service customer including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

transferring at least a part of said transaction records from said storage means to a data processing means;

generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

transferring said preprocessed individual transaction records including said summary reports from said data processing means utilizing said summary reports for expedited retrieval of data;

performing additional processing of said individual transaction records on said at least one personal computer data processing means utilizing said summary reports for expedited retrieval of data;

presenting a subset of said individual transaction records chosen via said at least one personal computer processing means including said exact charges actually billed to said user; and

said data processing means and said at least one personal computer processing means comprising respective computation hardware means and respective software programming means arranged for directing the activities of said computation hardware means.

Id. col. 31, l. 39 to col. 36, ll. 3-45. The Court provides additional facts about the '270 patent below as necessary.

B. THE ACCUSED SYSTEMS

Qwest provides billing analysis products to some of its customers under the names Logic and eBill Companion. Belusko Decl., Ex. 10 at QCC-0005104. Qwest also provides a billing analysis product named Insite to BellSouth customers under an agreement with BellSouth. Centillion alleges that Insite is identical to Logic and eBill Companion and, therefore, it has not provided a separate infringement analysis for it. Qwest has a portal referred to as Qwest Control available to business customers. Formerly, Qwest provided a portal referred to as Qwest Remote Control to its wholesale customers; however, it was discontinued. Belusko Decl., Exs. 12 at QCC-1908528; 13 at 191-92. The Qwest Control portal permits access to various Qwest applications, including eBill Companion. Belusko Decl., Exs. 4 at 116-117, 120-21; 11 at QCC-0908003; 15 at QCC-579227. Centillion claims that Qwest infringed claims 1, 8, 10, 46 and 47 through its use of Logic, eBill Companion, and Insite, and the Qwest Control and Qwest Remote Control portals.

Qwest introduced eBill Companion in 2002. Pl's Ex. 2, Dkt. No. 623(4), at 42. The eBill Companion system provides Qwest's commercial customers billing-analysis capability. The eBill Companion system is comprised of two parts: (1) Qwest's Billing Systems, including LATIS, eBill Companion Back Office, and, according to Centillion, "various related 'back office' systems;" and (2) the eBill Companion client applications, which Qwest makes available to all long distance business customers.

The eBill Companion system permits display and billing analysis of long-distance usage for a particular customer. The customers receive the actual billing information either directly from Qwest or, if received on CDROM, through a third party entity contracted for that service by Qwest. Pl's Ex. 4, Dkts. No. 623(6), at QCC-005285-508; Defs.' Ex. 3, Dkt.

No. 643(5), at 293. Call detail records ("CDRs") relating to discrete customer telephone calls are captured at Qwest's telecom switches. Pl.'s Exs. 5, Dkt. No. 623(8), at QCC-2941499-529, 2941506; 6, Dkt. No. 623(9), at 341761-82, 3411764. In addition, Qwest's Billing Systems rate each CDR to include the exact charge actually billed to the customer for the call. Pl.'s Exs. 6, Dkt. No. 623(9), at QCC-341772-73; 7, Dkt. No. 623(10), at 69-71. Qwest stores rated CDRs at several instances, or locations, in the Qwest architecture. For example, the Billing Data Service is a data store for call detail records that have been rated by Qwest's LATIS Pricing Engine during the LATIS Cycle Processing. Pl.'s Exs. 3, Dkt. No. 623(5); 8, Dkt. No. 623(11), at QCC-617931-37.

The Qwest Billing Systems are software systems running on hardware. In particular, the eBill Companion Back Office ("eBCBO") is a software application written in JAVA and XML running on the "LXLKPO37" machine in Qwest's Columbus, Ohio, Cyber Center. Pl.'s Ex. 9, Dkt. No. 624(2). The LATIS system is a software application that runs on the "NTLKPROD," "SULKPROD," "LWPROD," and "LAT A-Z" servers. Pl.'s Exs. 10, Dkt. NO. 624(3); 11, Dkt. No. 624(4). eBCBO fetches call detail records from the Billing Data Server via Billing Data Server Interactive. Call detail records stored on the Billing Data Server are transferred to the eBCBO in response to requests from the Back Office. Although the parties disagree about the specifics, for purposes of this motion the Court assumes that the customer's billing data pooled by eBill's "back end" is made available to Qwest's customers through the Qwest Control portal or on CDROM. Qwest customers can receive the eBill applications software and supporting billing data via either web download through the eBill Companion client application or on CD-ROM. The eBill Companion client application is designed to adapt the customer's personal computer to display information concerning the

actual cost for services provided by Qwest using the actual billing information received from Qwest.

For all of Qwest's billing systems, Centillion admits that Qwest customers are not obligated or contractually bound to perform additional processing on individual transaction records provided by Qwest. Pl.'s Br., Dkt. No. 655, at 9. Rather, Qwest's customers independently determine whether or not to perform additional processing on individual transaction records provided by Qwest. Moreover, Qwest does not control whether its customers load the Logic or eBill Companion client applications on their personal computers. *Id.* at 9-10. Qwest stores its billing information as it chooses, and transfers it as it chooses to what Centillion and its expert allege is a data processing means. *Id.* at 10. Finally, the "Qwest Alternative Media Support Group Training Manual ("Support Manual")" contains instructions for Qwest personnel to log into a customer's account to assist the customer with technical difficulties. Pl.'s Ex. F, Dkt. NO. 655(8)-(10). However, the record does not contain any evidence of a Qwest employee performing this function for a Qwest customer.

The Court adds additional facts about the accused systems below as needed.

C. COBRA/TRACE

Qwest contends that NYNEX's Customer Oriented Billing Records Analysis system ("COBRA") and Telecommunications Record Analysis for Customer Evaluation system ("TRACE") invalidate the '270 patent and render the '270 patent obvious. Qwest, in large part, relies upon the deposition testimony of four former NYNEX employees. Qwest

asserts that these individuals were intimately involved in the creation and execution of the COBRA and TRACE systems.

Bruce Whitman ("Whitman") was director of billing systems at NYNEX during the 1980s. He claims to have conceived the idea for COBRA in 1986. Jim Coyle ("Coyle"), a former NYNEX manager who reported to Whitman, worked on the COBRA and TRACE projects from 1986 until 1992 or 1993. Pl.'s Ex. C, Dkt. No. 659(4), at 13-14, 34-35. Ed Varley ("Varley") worked for NYNEX from 1968 until 1994. He spent part of his time working in the COBRA and TRACE tape-processing center. Pl.'s Ex. D, Dkt. No. 659(2), at 28, 31-34, 36. Finally, Michael Graves ("Graves") created a substantial portion of the computer programming for COBRA/TRACE, and worked for NYNEX from 1986 to 1989. Pl.'s Ex. A, Dkt. No. 659(2), at 23-24, 40, 101.

According to Whitman, in the 1980s NYNEX faced pressure from business customers to provide an easier, more cost-effective method of reconciling telecommunications bills. Defs.' Ex. 8, Dkt. No. 607(3), at 34, 62. At the time, customers could either cull through stacks of paper bills or use mainframe computers to read magnetic tapes on which telecommunications companies offered billing information electronically. *Id.* at 62-64.

At some point between 1986 and 1988, Whitman claims that he conceived COBRA, a system that he believed would solve the billing problem. *Id.* at 27, 62, 66, 81, 94. According to a video Whitman claims he created in 1987 (the "COBRA video"), COBRA was "a personal computer diskette delivery system with tailored reports to the individual customer's request." Defs.' Ex. 7, Dkt. No. 607(2), at 0:34-0:40, 0:42-1:00. Whitman

testified that “[t]he initial concept was to deliver by floppy disk, readable by personal computer,” actual rated transactions. Defs.’ Ex. 8, Dkt. No. 607(3), at 82.

Whitman and Coyle testified that NYNEX already rated and stored transaction records electronically using mainframe computers and magnetic tape or disk. *Id.* at 44-47, 50, 55; Defs.’ Ex. 9, Dkt. No. 607(4), at 40-41. There were four different types of transaction records for NYNEX telecommunications services: TOLL; station message detail recording (“SMDR”); customer services records (“CSRs”), and other charges and credits (“OCC”).

TOLL records were for rated, point-to-point calls, “usually outside of the area code.” Defs.’ Exs. 8, Dkt. NO. 607(3), at 44-45; 9, Dkt. No. 607(4), at 50. Whitman asserts that a TOLL record included fields such as time of day, duration of call, the number from which the call was placed, the number to which the call was placed, and charge. Defs.’ Ex. 8, Dkt. NO. 607(3), at 44-46.

According to Graves, and as demonstrated by Defendant’s Exhibit 12, a TRACE Demonstration Package, the fields of an SMDR were identical to TOLL except for the width, or number of digits, of the charge field. Defs.’ Exs. 11, Dkt. No. 607(6), at 51, 161; 12, Dkt. No. 608(8), at CENT QWST 00030-31. However, SMDR did not provide a record-by-record charge format. Pl.’s Ex. A, Graves Depo. Tr., Dec. 9, 2008, Vol. 1 at 113, 123. In other words, although both TOLL and SMDR contained point-to-point detail records, Graves testified that SMDR did not have cost information. *Id.* at 123. However, Coyle testified that NYNEX charged local calls not on a per call basis, but rather per volume. Defs.’ Ex. 9, Dkt. No. 607(4), at 39. For example, NYNEX utilized a counter system where a

customer could make one hundred message unit calls per month, but would be charged for any calls over that amount. *Id.* at 39, 49.

Whitman testified that CSRs were “[a]n itemization of the service and equipment that the customer has leased, bought, purchased, [or] rented from the telephone company.” Defs.’ Ex. 8, Dkt. No. 607(3), at 114. Whitman claims that NYNEX held each CSR in a “master file . . . with an associated rental charge for each item of equipment and services.” *Id.* at 55, 114. According to Whitman, there was a CSR for every extension, telephone, switchboard, and data circuit. *Id.* at 55-56.

Finally, Whitman submitted that OCC files included “prorated charges that resulted from addition, deletion, or a change of service mid-month,” including services “like access to the network [and] rental of extension phones.” *Id.* at 52-53. In addition, OCC included onetime charges that only applied when NYNEX had a change to service, for example when an installer went to a location. *Id.* at 53-54.

Whitman and Coyle asserted that, by late 1986, NYNEX used these four stored transaction records to produce bills for its customers. Defs.’ Exs. 8, Dkt. No. 607(3), at 56, 58-59; 9, Dkt. No. 607(4), at 41. In addition, NYNEX produced, for purchasing customers, magnetic tapes that contained each customer’s TOLL, SMDR, CSR, or OCC transaction records. Defs.’ Exs. 8, Dkt. No. 607(3), at 89-90; 9, Dkt. No. 607(4), at 52, 104. However, according to Qwest’s expert, Jack D. Grimes, Ph.D (“Dr. Grimes”), and Whitman, the records on those magnetic tapes were not in a format compatible to personal computer software. Defs.’ Exs. 8, Dkt. No. 607(3), at 72; 13, Dkt. No. 608(9), at 76-79. Therefore, customers would need to process the records further before they could use the records on a personal computer. *Id.* Whitman envisioned using these magnetic tapes as inputs to the

COBRA system, which would process the records at NYNEX so customers with personal computers and popular database management software could use the records. Defs.' Ex. 8, Dkt. No. 607(3), at 85-86.

Whitman testified that COBRA consisted of three components. The first component processed the data, or magnetic tapes, into a format compatible with personal computers and database management software. Defs.' Ex. 8, Dkt. No. 607(3), at 68. The second component consisted of off-the-shelf, modified software that would create "specific templates" that the customer could use to view and further process records. *Id.* Finally, the third component consisted of an installation package for the customer to put on its own hardware to enable the customer to store the records and templates. *Id.* at 68-69.

Under Whitman's direction, Graves claims that he programmed the COBRA system to:

1. Process the transaction records from magnetic tape;
2. Analyze, reorganize, edit, and segregate the records by client and record type, depending on the customer's subscription;
3. Populate database tables with the processed transactions records;
4. Store those database tables in dBase files on diskettes for customers; and
5. Create command files that a customer could use with dBase on its personal computer to view and manipulate the transaction records in the dBase files.

Defs.' Exs. 11, Dkt. No. 607(6), at 43-45, 47-50, 53-60, 98; 14, Dkt. No. 607(7), at 262, 263-64, 268-70, 273, 279; 18, Dkt. No. 607(11), at 134, 151-53; 19, Dkt. No. 607(12), at GR 000007. Coyle asserts that he assisted Whitman with COBRA demonstrations, including demonstrations that utilized the COBRA video. Defs.' Exs. 8, Dkt. No. 607(3), at 97; 9, Dkt. No. 607(4), at 68-69.

Citing Whitman's testimony and a COBRA Operator's Manual, Qwest claims that NYNEX first rolled out COBRA to trial customers in 1987. Defs.' Ex. 15, Dkt. No. 607(8), at CENTVZ 01971-01981. Whitman recalled providing the manual to NYNEX's customers—Morgan Stanley, for example—and that all of NYNEX's trial customers utilized COBRA to view their actual transaction records. Defs.' Ex. 8, Dkt. No. 607(3), at 108-112, 159, 200-01, 203-04. According to the COBRA Trial Customer Documentation Release 2.0, depending on a NYNEX customer's initial subscription request, the customer would "receive one or all of the DBASE database files and their related indices." Defs.' Ex. 21, Dkt. No. 607(14), at CENTVZ-01933. Whitman asserts that during this time he gave over forty demonstrations. Defs.' Ex. 8, Dkt. No. 607(3), at 98.

Whitman testified that, in the fall of 1987, NYNEX decided to launch COBRA on a subscription basis and, for marketing reasons, rebranded it as TRACE. *Id.* at 11, 145, 158. As part of that effort, Whitman claims that NYNEX created and distributed an introductory package to prospective subscribing customers. *Id.* at 152-53. The package included a user guide, a sample diskette, and instructions for the installation of the software on the customers' personal computers. *Id.* at 153. Whitman testified that NYNEX placed TRACE on sale by the end of 1987. *Id.* at 159.

II. STANDARDS

A. SUMMARY JUDGMENT

Summary judgment is granted "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 a

judgment as a matter of law." Fed. R. Civ. P. 56(c). See also *CAE Screenplates v. Heinrich Fiedler GMBH*, 224 F.3d 1308, 1316 (Fed. Cir. 2000). An issue is genuine only if the evidence is such that a reasonable jury could return a verdict for the opposing party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A disputed fact is material only if it might affect the outcome of the suit in light of the substantive law. See *id.*

The moving party has the initial burden to show the absence of genuine issues of material fact. See *Wollin v. Gondert*, 192 F.3d 616, 620 (7th Cir. 1999); *Schroeder v. Barth*, 969 F.2d 421, 423 (7th Cir. 1992). This burden does not entail producing evidence to negate claims on which the opposing party has the burden of proof. See *Green v. Whiteco Indus., Inc.*, 17 F.3d 199, 201 & n.3 (7th Cir. 1994). The party opposing a summary judgment motion bears an affirmative burden of presenting evidence that a disputed issue of material fact exists. See *Wollin*, 192 F.3d at 621; *Gonzalez v. Ingersoll Milling Mach. Co.*, 133 F.3d 1025, 1031 (7th Cir. 1998); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Scherer v. Rockwell Int'l Corp.*, 975 F.2d 356, 360 (7th Cir. 1992). The opposing party must "go beyond the pleadings" and set forth specific facts to show that a genuine issue exists. See *Wollin*, 192 F.3d at 621; *Stop-N-Go of Madison, Inc. v. Uno-Ven Co.*, 184 F.3d 672, 677 (7th Cir. 1999); *Hong v. Children's Mem. Hosp.*, 993 F.2d 1257, 1261 (7th Cir. 1993), *cert. denied*, 511 U.S. 1005 (1994). This burden cannot be met with conclusory statements or speculation, see *Cliff v. Bd. of Sch. Comm'rs*, 42 F.3d 403, 408 (7th Cir. 1994) (citing *McDonnell v. Cournia*, 990 F.2d 963, 969 (7th Cir. 1993)); accord *Chapple v. Nat'l Starch & Chem. Co.*, 178 F.3d 501, 504 (7th Cir. 1999); *Weihaupt v. Am. Med. Ass'n*, 874 F.2d 419, 428 (7th Cir. 1989), but only with appropriate citations to relevant admissible evidence. See Local Rule 56.1; *Brasic v.*

Heinemann's Inc., Bakeries, 121 F.3d 281, 286 (7th Cir. 1997); *Foreman v. Richmond Police Dept.*, 104 F.3d 950, 957 (7th Cir. 1997); *Waldrige v. Am. Hoechst Corp.*, 24 F.3d 918, 923-24 (7th Cir. 1994). Evidence sufficient to support every essential element of the claims on which the opposing party bears the burden of proof must be cited. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In considering a summary judgment motion, a court must draw all reasonable inferences in the light most favorable to the opposing party. See *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 988 (Fed. Cir. 1999); *Wollin*, 192 F.3d at 621; *Thomas & Betts Corp. v. Panduit Corp.*, 138 F.3d 277, 291 (7th Cir. 1998); *Spraying Sys. Co. v. Delavan, Inc.*, 975 F.2d 387, 392 (7th Cir. 1992). If a reasonable fact finder could find for the opposing party, then summary judgment is inappropriate. *Stop-N-Go*, 184 F.3d at 677; *Shields Enters., Inc. v. First Chi. Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992). When the standard embraced in Rule 56(c) is met, summary judgment is mandatory. *Celotex Corp.*, 477 U.S. at 322-23; *Thomas & Betts*, 138 F.3d at 291; *Shields Enters.*, 975 F.2d at 1294.

B. PATENT INFRINGEMENT

Under 35 U.S.C. § 271(a), "whoever without authority makes, uses, offers to sell, or sells any patented invention . . . within the United States . . . infringes the patent." Reviewing whether a particular device or system infringes a patent is a two-step process. See *CAE Screenplates*, 224 F.3d at 1316; *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362 (Fed. Cir. 1999). First, a court must interpret the disputed claims, "from a study of all relevant patent documents," to determine their scope and meaning. *K-2 Corp.*, 191 F.3d

at 1362. See also *Dolly, Inc. v. Spalding & Evenflo Cos., Inc.*, 16 F.3d 394, 297 (Fed. Cir. 1994). Second, a court must determine if the accused device, system or process comes within the scope of the properly construed claims, either literally or by a substantial equivalent. See *K-2 Corp.*, 191 F.3d at 1362; *Dolly*, 16 F.3d at 397; *SmithKline Diagnostics v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988). In this case, the first phase of the infringement analysis, claim construction, occurred prior to the instant summary judgment motions.² Therefore, the Court must focus on whether Qwest's systems come within the scope of the claims as they were previously construed by the Court.

Ordinarily, to prove infringement of a patent, the plaintiff must show by a preponderance of the evidence that every limitation of the claim asserted to be infringed has been found in an accused device or process, either literally or by an equivalent. See *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 796 (Fed. Cir. 1990); *Pennwalt v. Durand-Wayland, Inc.*, 833 F.2d 931, 935 (Fed. Cir. 1987), *cert. denied*, 485 U.S. 961 (1988) & 485 U.S. 1009 (1988). Here, however, the parties disagree over the correct standard that the Court should apply to determine if Qwest infringed upon the '270 patent's systems claims. Simply put, the parties dispute whether Qwest can be held liable for the "use" of the '270 patent if it did not, by itself, practice each and every element of the '270 patent's system claims. *Centillion*, citing *NTP, Inc. v. Research In Motion, LTD.*, 418 F.3d 1282 (Fed. Cir. 2005), urges the Court to adopt and apply a standard that would hold

² In its Order on Claim Construction, the Court ordered the parties to brief the construction of the term "usage." The Court declines to construe "usage" because its construction of that term is not necessary to resolve these motions for summary judgment.

Qwest liable if Qwest put the '270 patent as a whole into service, i.e. exercised control and benefitted from its use as a whole. Qwest claims that *Cross Medical Products, Inc. v. Medtronic Sofamor Danek, Inc.* ("CMP"), 424 F.3d 1293 (Fed. Cir. 2005), and *BMC Resources, Inc. v. Paymenttech, L.P.* ("BMC"), 498 F.3d 1373 (2008), establish that Qwest cannot be held liable for direct infringement of a system claim if a third party is responsible for practicing some elements of a claim.

In *NTP*, the court considered the patent for the technology embodied in the Blackberry device, which included both system and method claims. NTP alleged that Research in Motion ("RIM") was liable for direct infringement under § 271(a). In the district court, RIM argued that summary judgment should be entered against NTP because the Blackberry relay component of the accused system was located in Canada; therefore, the component failed to satisfy the requirement that the infringing activity occur within the United States. *NTP*, 418 F.3d at 1314. The district court disagreed, and the jury found RIM liable for direct, induced and contributory infringement.

RIM appealed the jury verdict. However, the Federal Circuit specifically noted that RIM had not appealed the jury's conclusion that RIM's customer's "put[] into action" the patented system. *Id.* at 1317 n.13. Rather, RIM appealed the district court's decision that RIM's customers used the patent "within the United States" as required by § 271(a).

The court noted that the situs of the infringement "is wherever an offending act [of infringement] is committed." *Id.* at 1316. Moreover, the situs of the infringing act is a "purely physical occurrence[]." *Id.* The Court observed that, in terms of the infringing act of "use," other courts had interpreted the term "use" broadly. *Id.* For example, "[i]n *Bauer & Cie v. O'Donnell*, 229 U.S. 1 (1913), the Supreme Court stated that 'use,' as used in a

predecessor title 35, is a 'comprehensive term and embraces within its meaning the right to put into service any given invention.'" *Id.* at 1316-17. Moreover, the court observed that the ordinary meaning of "use" is to "put into action or service." *Id.* at 1317 (citing WEBSTER'S THIRD NEW INT'L DICT. 2523 (1993)). Finally, the court noted that following the *Bauer* decision, courts that have addressed the meaning of "use" under § 271(a) "have consistently followed the Supreme Court's lead in giving the term a broad interpretation. *Id.* (citations omitted).

Ultimately, the Court held that "[t]he use of a claimed system under section 271(a) is the place at which the system as a whole is put into service, i.e., the place where control of the system is exercised and beneficial use of the system obtained." *Id.* Because RIM's United States customers controlled the transmission of the originated information and benefitted from the exchange of that information with the Blackberry relay component in Canada, it was proper for the jury to find that use of NTP's asserted system claims occurred within the United States. *Id.*

In *CMP*, the court considered an apparatus claim directed at a fixation device for segments of the spine. 424 F.3d at 1299. As properly construed, one of the structural claim limitations required that the anchor seat be in contact with bone. *Id.* at 1310. Medtronic provided the devices to surgeons for placement; however, Medtronic itself did not make a device that included an anchor seat in contact with bone. Rather, the surgeons, with Medtronic personnel in the surgery room, connected the device to the bone. Cross-Medical argued that it was the combination of Medtronic and the surgeon that resulted in direct infringement. In other words, Cross-Medical urged the Court to hold Medtronic liable for direct infringement even though a third party, the surgeons, performed

one of the elements of the apparatus claim, namely connecting the device to the bone. The

Court stated:

In support of its argument that Medtronic directly infringes, Cross Medical cites evidence that Medtronic's representatives appear in the operating room, identify instruments used by surgeons, and thus in effect "join" the anchor seat to the bone. Cross Medical argues that the situation is analogous to those in which courts have found a party to directly infringe a method claim when a step of the claim is performed at the direction of, but not by, that party. See, e.g., *Shields v. Halliburton Co.*, 493 F.Supp. 1376, 1389 (W.D.La.1980). However, if anyone makes the claimed apparatus, it is the surgeons, who are, as far as we can tell, not agents of Medtronic. Because Medtronic does not itself make an apparatus with the "interface" portion in contact with bone, Medtronic does not directly infringe.

CMP, 424 F.3d at 1311.

Finally, in *BMC*, the Federal Circuit considered the extent to which an alleged infringer is liable for direct infringement of a method claim if it does not itself practice each step of the method. 498 F.3d at 1378-81. The Court began its analysis by acknowledging that direct infringement requires a party to perform or use each and every step or element of a claimed method or product. *Id.* at 1378. The Court continued:

When a defendant participates in or encourages infringement but does not directly infringe a patent, the normal recourse under the law is for the court to apply the standards for liability under indirect infringement. Indirect infringement requires, as a predicate, a finding that some party amongst the accused actors has committed the entire act of direct infringement. *Dynacore Holdings Corp. v. U.S. Phillips Corp.*, 363 F.3d 1263, 1272 (Fed.Cir.2004).

These rules for vicarious liability might seem to provide a loophole for a party to escape infringement by having a third party carry out one or more of the claimed steps on its behalf. [*CMP*], 424 F.3d [at]1311[.]. To the contrary, the law imposes vicarious liability on a party for the acts of another in circumstances showing that the liable party controlled the conduct of the acting party. *Engle v. Dinehart*, 213 F.3d 639 (5th Cir.2000) (unpublished decision) (citing Restatement (Second) of Agency § 220 cmt. d). In the context of patent infringement, a defendant cannot thus avoid liability for direct infringement by having someone else carry out one or more of the

claimed steps on its behalf. In [*CMP*], this court refused to attribute the acts of surgeons in making the claimed apparatus to the medical device manufacturer because the medical device manufacturer representative, who appeared in the operating room and identified instruments for the surgeons, did not direct the surgeons' actions.

Id. Thus, according to the *BMC* court, the basis for the *CMP* court conclusion that Medtronic had not directly infringed was its lack of direction over the surgeons.

Centillion submits that the *NTP* court defined what constitutes "use" under § 271(a) and that, therefore, under § 271 an infringer "uses" a system for purposes of direct infringement when it controls and benefits from use of the system as a whole. Centillion argues that infringement of a system claim does not depend on whether a party practices each element of the claim, so long as the infringing party has used a system embodying all of the elements and limitations of the claim. As a result, Centillion contends that Qwest "used" the '270 because it controlled and benefitted from its use. Qwest argues that *NTP* should be strictly limited to the narrow issue of where "use" occurs under § 271(a), and not what constitutes "use." Moreover, Qwest argues that *CMP* and *BMC* clearly establish that, in order to be liable for direct infringement of the '270 patent, Qwest, by itself, must have practiced each and every element of the system claims. To the extent the law attributes the actions of a third party to an alleged infringer under *BMC*, Qwest submits that analysis only pertains to method claims.

The Court concludes that the Federal Circuit defined what constitutes "use" under § 271(a) in *NTP*. Although, as Qwest notes, the *NTP* court addressed the question of when the infringing act of "use" occurs "within the United States" under § 271(a), in order to understand where the use of a patented system occurs, the court necessarily had to establish what constitutes the infringing act of use. Therefore, by answering the question

of when use occurs within the United States, the *NTP* court implicitly defined what constitutes "use" under § 271(a). As mentioned before, the court concluded that "[t]he use of a claimed system under section 271(a) is the place at which the system as a whole is put into service, *i.e.*, the place where control of the system is exercised and beneficial use of the system obtained. *NTP*, 418 F.3d at 1317. Accordingly, the Court concludes that an infringer "uses" a system under § 271(a) when it puts the system into service or action, *i.e.* when it exercise control over, and benefits from, the system's application.

However, to the extent Centillion suggests that under *NTP* the use of some, but not all, of the elements of a system claim is sufficient to find direct infringement if the use is "beneficial," the Court disagrees. "Infringement requires, as it always has, a showing that a defendant has practices each and every element of the claimed invention." *BMC*, 498 F.3d at 1380 (citing *Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 40 (1997)); see *CMP*, 424 F.3d at 1310. This requirement derives from § 271(a) itself. *Id.* "Thus, liability for infringement requires a party to make, use, sell, or offer to sell the patented invention, meaning the entire patented invention." *NTP*, decided before *BMC* and *CMP*, did not change this requirement.

However, the question remains whether § 271(a) applies to an alleged infringer that practices some, but not all, of the elements of a system claim if it directs a third party to practice the remaining elements. Qwest argues that *CMP* and *BMC* explicitly bar a finding of direct infringement of a system claim where the defendant did not, by itself, practice each an every element of the claim. Contrary to Qwest's belief, neither *CMP* nor *BMC* held that an alleged infringer may never be held liable if the infringer did not use each element of a claimed system. Rather, as noted in *BMC*, the court in *CMP* concluded that the plaintiff

could not satisfy its burden to show the defendant sufficiently directed the actions of a third party such that the law would attribute the third-party's action to the defendant. In other words, had the Medtronics personnel sufficiently "direct[ed] the surgeons' actions," Medtronics would have directly infringed that apparatus claim.

Therefore, the Court concludes that under *BMC*, *CMP* and *NPT*, a party is liable for direct infringement for the "use" of a system claim under § 271(a) if it, by itself or in combination with a third party directed by it, put each and every element of the system claim into service, i.e. exercised control over, and benefitted from, the application of each and every element of the system claim. *BMC*, 498 F.3d at 1378-81; *CMP*, 424 F.3d at 1311; *NPT*, 418 F.3d at 1316-17.

As to the '270 patent's method claim, "a method claim is directly infringed only if each step of the claimed method is performed." *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1328 (Fed. Cir. 2008). However, "[a] party cannot avoid infringement . . . simply by contracting out steps of a patented process to another entity." *BMC*, 498 F.3d at 1381. "Accordingly, where the actions of multiple parties combine to perform every step of a claimed method, the claim is directly infringed only if one party exercises "control or direction" over the entire process such that every step is attributable to the controlling party, i.e., the 'mastermind.'" *Muniauction*, 532 F.3d at 1329 (quoting *BMC*, 498 F.3d at 1380-81).

C. VALIDITY

By statute, a patent is presumed to be valid. 35 U.S.C. § 282. The party challenging a patent's validity must prove invalidity by clear and convincing evidence. See *Apple Computer Inc. v. Articulate Sys., Inc.*, 234 F.3d 14, 26 (Fed. Cir. 2000); *Oney v.*

Ratliff, 182 F.3d 893, 895 (Fed. Cir. 1999) (citing *Finnigan Corp. v. Int'l Trade Comm'n*, 180 F.3d 1354 (Fed. Cir. 1999)); *Am. Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1360 (Fed. Cir. 1984). In the present procedural posture, “[s]ummary judgment is inappropriate if a trier of fact applying the clear and convincing standard could find for either party.” *Oney*, 182 F.3d at 895.

An accusation of anticipation is based on the requirement that an invention be novel or new. “The novelty requirement lies at the heart of the patent System.” I DONALD S. CHISUM, CHISUM ON PATENTS § 3.01 (Rel. No. 71, Sept. 1999) (hereinafter “CHISUM ON PATENTS”). The defense of anticipation “requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee.” *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302 (Fed. Cir. 1995). See also *MEHL/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 2000); *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1349 (Fed. Cir. 1998); *Hupp v. Siroflex of Am., Inc.*, 122 F.3d 1456, 1461 (Fed. Cir. 1997). A challenger cannot prove anticipation “by combining more than one reference to show the elements of the claimed invention.” “CHISUM ON PATENTS § 3.02. Thus, a prior patent or device must contain all of the elements and limitations in the disputed patent as arranged in the patented device. See *C.R. Bard*, 157 F.3d at 1349; *Hoover Group*, 66 F.3d at 303. But, “a prior art reference may anticipate when the claim limitations not expressly found in that reference are nonetheless inherent in it.” *MEHL/Biophile Int'l*, 192 F.3d at 1365. Anticipation is a question of fact, but may be decided on summary judgment if there is no genuine issue of material fact. *Oney*, 182 F.3d at 895.

III. DISCUSSION

As previously stated, the parties filed cross motions for summary judgment on validity and infringement. The Court considers each in turn.

A. VALIDITY

Qwest asserts that NYNEX's COBRA and TRACE systems constitute invalidating prior art under 35 U.S.C. § 102(a) and (b). In response, Centillion argues, *inter alia*, that neither COBRA nor TRACE satisfies the "as specified by the user" limitation in Claims 1, 8, and 47 of the '270 patent. As discussed above, claim 1 states "said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records . . ." '270 Patent, col. 31, ll. 56-58. Similarly, claim 8 states "said data processing means generating preprocessed summary reports as specified by the user from said telecommunications usage records . . ." *Id.* col. 32, ll. 48-50. Finally, method claim 47 states "generating preprocessed summary reports as specified by the user from said individual transaction records . . ." *Id.* col. 36, ll. 22-24.

The Court construed "as specified by the user" to mean "customer selects, or makes specific, the character of." Dkt. No. 394 at 34. In addition, the Court construed "summary report" as a collection of analyzed and/or reorganized data." *Id.* at 41. Accordingly, to satisfy the '270 patent's limitations, COBRA and TRACE must have allowed NYNEX's customers to select, or make specific, the character of the collection of analyzed and/or reorganized data the customers received from NYNEX as subscribers of COBRA/TRACE.³

³ This analysis assumes that the '270 patent meets the written description and enablement requirement of 35 U.S.C. § 112, ¶ 1. See Dkt. No. 410 at 10 (concluding

Qwest asserts that certain versions of COBRA and then NYNEX's final product, TRACE, satisfy the "as specified by the user" limitation because NYNEX customers could select which of the four types of billing data—TOLL, SMDR, CSR, and OCC—on which they wanted to receive a summary report. In other words, Qwest asserts that NYNEX customers selected, or made specific, the character of the summary reports they received from NYNEX by choosing the type of billing data they wanted to receive during their initial subscription request. In addition, Qwest argues that the "as specified by the user" limitation is satisfied by COBRA and TRACE because the customers could provide a purchase order number to NYNEX.

The Court concludes that neither COBRA nor TRACE satisfies the "as specified by the user" limitations in Claims 1, 8, or 47 of the '270 patent. Therefore, COBRA and TRACE do not invalidate the '270 patent under §102. Although Qwest contends that NYNEX customers selected, or made specific, the character of their preprocessed summary reports through their initial subscription request, the record suggests that those subscription requests were merely an extension of the prior system utilized by NYNEX. As Whitman testified, prior to COBRA, NYNEX customers received billing data on paper or magnetic disk. Customers could subscribe to receive this billing data. Because Whitman thought there was a more effective and cost efficient way to supply billing data to the customer, he created COBRA, the purpose of which was to give customers billing data on disks readable by personal computer. However, as Graves' deposition testimony indicates, a customer's initial subscription, namely the decision regarding the type of billing data the

there was a genuine issue of material facts regarding whether or not the '270 patent met the written description and enablement requirements of 35 U.S.C. § 112, ¶ 1)

customer would like to receive as a COBRA customer, was merely an extension of the pre-COBRA system.

Q. Was there anything that you felt was a deficiency of TRACE at the time that you were demoing it that you wanted to continue to work on?

* * *

A. No . . . [T]he eventual capability was for people to be able to request what they wanted. So my goal was to get the basic browser as solid as possible and then to move on to the next part, which would be, okay, how do we make this so that it's subscribable, you can subscribe to what you want and you can actually tell what you would like to see, if that's possible.

Q. What do you mean by "you can subscribe to what you want," you mean the customer?

A. Yeah, the customer could subscribe to a TOLL file or an SMDR or CSR or OC&C.

Q. I see. They couldn't do that at the time of the demo?

A. They already were doing it with tapes. But at the time of the demo – you know, they had – when they subscribed – there was already a subscription system for TOLL data on the nine-track. . . So you – that was already in place. This is kind of like a – you know, this whole process is really . . . extending that process.

Pl.'s Ex. 11, Dkt. No. 614(12), at 198-99. In other words, the COBRA subscription request was merely an extension of the pre-COBRA system; the customer gave the same input to NYNEX in both the pre-COBRA system and the COBRA/TRACE systems.

In contrast, the '270 patent contemplates more than merely collecting the same call data that customers received on paper or magnetic disk and compiling it to a diskette readable by personal computer. Rather, a major component of the '270 patent, namely the data processing means, created preprocessed summary reports after input from the

customer regarding the character of those reports. The '270 patent provided the following list of example reports that the data processing means would generate:

number of calls, length, and total call cost for each accounting or project code;

number of calls, length, and total cost for day, evening and night calls for each carrier;

number of calls, length, and total cost of calls of each call type;

number of calls, length, and total cost for day, evening, and night calls to each terminating area code;

number of calls, length, and total cost for calls of each product type (i.e. carrier's marketing plan);

number of calls, length, and total cost for day, evening, and night calls from each site or location identifier; [and]

number of calls, length, and total cost for calls made from each originating station and authorization code.

'270 Patent, col. 7, ll. 49-68; col. 8, 1-3. As such, a service customer could, for example, "select, or make specific, the character of" the preprocessed summary reports it received as a subscriber to the '270 patent by choosing which of these reports, or similar reports, if any, it would like to receive on diskette. Put differently, a customer of the '270 patent could not only choose the type of billing data it would like to receive, but it could also select, or make specific, the reports that the billing data populated. Therefore, the ability of NYNEX's customers to subscribe to receive a certain type of billing data does not satisfy the "as specified by the user" limitation of the '270 patent.

Qwest argues that COBRA/TRACE permitted costumers to provide input other than the type of billing data the customer would like to receive. In support, Qwest cites the COBRA video and Whitman's deposition testimony. During the demonstration taped on

the COBRA video, the speaker noted how part of the preprocessed reports presented to the end customer directly incorporated the customer's purchase order number. When asked about this feature during his deposition, Whitman explained:

When a customer makes a transaction with the telephone company, . . . we allow them to assign an arbitrary or their own number to identify all of the activity associated with that transaction. That's helpful to customers to allocate charges back to their departments within their companies. And so the data is carried through the system until billing time when it's put out on the bill along with charges that pertain to that transaction.

Defs.' Ex. 8, Dkt. No. 607(3), at 105-06. According to Whitman, the purchase order appeared in the diskette that was given to the customer in the COBRA system. *Id.* at 106. Qwest argues that, by providing a purchase order number to NYNEX, NYNEX customers selected, or made specific, the summary report they received from NYNEX as COBRA/TRACE subscribers.

However, Qwest fails to designate any evidence that establishes actual TRACE customers submitted a purchase order number to NYNEX. Although Qwest points to the COBRA video, and Whitman's explanation of that video, as such evidence, the COBRA video was used "internally . . . in the company." Pl.'s Ex. B, Dkt. No. 659(3), at 100. Moreover, it is not clear whether NYNEX showed the video to customers, or afforded the customers the opportunity to provide a purchase order number. Accordingly, although at the time the tape was created NYNEX may have anticipated allowing customers to provide a purchase order number, Qwest has failed to designate evidence that NYNEX customers actually provided a purchase order number to NYNEX. The designated evidence only supports a finding that NYNEX customers could select the type of billing data they wished to receive from NYNEX. Therefore, there are no genuine issues of material fact regarding

whether COBRA and TRACE satisfy the "as specified by the user" limitation. Consequently, COBRA and TRACE do not invalidate independent claims 1 and 8, and 47, because COBRA and TRACE do not contain each and every limitation of those claims. See *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002) ("A single prior art reference anticipates a patent claim if it expressly or inherently describes each and every limitations set forth in the patent claim."). Likewise, dependent claims 10 and 46 are also not invalid. See, e.g., *Hartness Int'l. Inc. v. Siplimatic Eng'g Co.*, 819 F.2d 1100, 1108 (Fed. Cir. 1987).

Finally, Qwest argues that COBRA and TRACE render claim 46, which depends from claim 8, obvious under 35 U.S.C. § 103. However, "a claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." 35 U.S.C. § 112, ¶ 4. Qwest has not addressed whether COBRA and TRACE rendered claim 8's limitations obvious. In other words, Qwest has not met its initial burden to show the absence of genuine issues of material fact. See *Wollin*, 192 F.3d at 620.

In conclusion, Qwest's Motion for Summary Judgment of Invalidity (Dkt. No. 605) is **DENIED**. Centillion's Motion for Partial Summary Judgment (Dkt. No. 613) is **GRANTED**.

B. INFRINGEMENT

As stated above, Qwest seeks summary judgment for non-infringement on all of the accused systems. Centillion seeks summary judgment on just the eBill Companion. The Court first considers system claims 1, 8, 10, and 46. Then, the Court considers method claim 47.

1. System Claims

The Court must determine whether there are genuine issues of material facts as to whether Qwest or its customers directly infringed claims 1, 8, 10, and 46. As stated above, a party is liable for direct infringement for the "use" of a system claim under § 271(a) if it, by itself, or in combination with a third party directed by it, put each and every element of the system claim into service, i.e. exercised control over, and benefitted from, the application of each and every element of the system claim.

First, Centillion contends that Qwest directly infringes the '270 patent under § 271(a). The portion of the system claims relevant to the Court's analysis state: "said personal computer data processing means being adapted to perform additional processing . . ." '270 Patent, col. 31, ll. 67-68, col. 32, ll. 59-60. The parties agree that "said personal computer data processing means" refers to a customer's personal computer. In addition, the Court construed "additional processing" to mean "more action upon" or "further manipulating." Dkt. No. 394 at 40.

Centillion submits that the accused systems satisfy the '270 patent's limitation "said personal computer data processing means being adapted to perform additional processing" because the e-Bill client application, for example, is designed to adapt the customers' personal computers, the customers download the application following Qwest's instructions and user guide, and the customers "further manipulate" the billing data they receive from Qwest. However, as the Court noted earlier, as a general rule, to hold Qwest liable for direct infringement Centillion must demonstrate that Qwest, by itself, practiced each and every limitation of the system claim. Here, however, Qwest relies on its customers to satisfy this limitation. Although the eBill client application may have been designed to adapt

the customer's personal computer, the designated evidence demonstrates that it does not actually adapt the customer's computer until the customer executes the application. Moreover, Qwest does not control whether its customers load the Logic or eBill Companion client applications on their personal computers. Finally, although the Support Manual indicates that Qwest personnel may have the capability to log in a customer's account, the record does not contain any evidence that Qwest personnel actually performed this service. In other words, Centillion has failed to raise an issue of fact that Qwest personnel adapted a customer's personal computer for additional processing as claims 1, 8, 10 and 46 contemplate.

Of course, an exception to the general rule that a party must, by itself, practice each and every element of a patent claim exists where the party directed a third party to reduce to practice the remaining elements of a claim. Accordingly, Centillion must demonstrate a genuine issue of material fact as to whether Qwest sufficiently "directed" its customers to "adapt [their personal computers] to perform additional processing on said individual transaction records." '270 Patent, col. 31, ll. 67-68, col. 32, ll. 59-60. However, Centillion cannot meet this burden. Centillion admits Qwest's customers are not obligated or contractually bound to perform additional processing on individual transaction records provided by Qwest. Rather, Qwest's customers independently determine whether or not to perform additional processing on individual transaction records by Qwest. Moreover, Qwest does not control whether its customers load the Logic or eBill Companion client applications on their personal computers. Therefore, the Court concludes that Centillion has failed to raise genuine issues of material fact regarding whether Qwest directly infringed independent claims 1 and 8, and dependent claims 10 and 46.

Likewise, Centillion has failed to demonstrate the Qwest's customers directly infringed claims 1, 8, 10, and 46. Centillion has not demonstrated, for example, that Qwest's customers directed or controlled the "data processing means" of the accused systems' "back end." Moreover, Centillion has not demonstrated that Qwest's customers sufficiently directed Qwest personnel to practice the limitations of the system claims that the customers did not themselves practice. Rather, Centillion argues that Qwest's customers directly infringed the '270 patent because they benefitted from its use. However, as the Court concluded above, such a finding is insufficient to establish direction infringement under § 271(a).

Accordingly, the Court concludes that Centillion has failed to raise a genuine issue of material fact regarding whether Qwest or its customers directly infringed claims 1, 8, 10, and 46 under § 271(a). Consequently, without a finding of direct infringement, Qwest is not liable under theories of indirect infringement. *See Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1272 (Fed. Cir. 2004) ("Indirect infringement, whether inducement to infringe or contributory infringement, can only arise in the presence of direct infringement ...").

Therefore, Qwest's Motion for Summary Judgment of Non-Infringement (Dkt. No. 617) on system claims 1, 8, 10 and 46 of the '270 patent is **GRANTED**. Centillion's Motion for Summary Judgment of Infringement (Dkt. No. 616) on those claims is **DENIED**.

2. Method Claim

As stated above, "a method claim is directly infringed only if each step of the claimed method is performed." *Muniauction*, 532 F.3d at 1328. Moreover, "where the actions of multiple parties combine to perform every step of a claimed method, the claim is directly infringed only if one party exercises "control or direction" over the entire process such that every step is attributable to the controlling party, i.e., the 'mastermind.'" *Muniauction*, 532 F.3d at 1329 (quoting *BMC*, 498 F.3d at 1380-81).

The relevant portion of claim 47 states: "performing additional processing of said individual transaction records on said at least one personal computer data processing means utilizing said summary reports for expedited retrieval of data[.]" Centillion claims that Qwest performs each step of claim 47 when Qwest Alternate Media Support Group personnel log in as an eBill Companion user to provide support or training to a customer. However, although the Support Manual indicates that Qwest personnel may have the capability to log in a customer's account, the record does not contain any evidence that Qwest personnel actually performed this service. Therefore, Centillion has failed to designate evidence that demonstrates Qwest performed the "additional processing" step of claim 47.

Centillion argues that Qwest exerts sufficient "direction or control" over the performance of the additional processing step of claim 47 to hold it liable as a "mastermind." However, although Qwest provides the client application used to perform additional processing, Qwest's customers are required to execute the application before it adapts their personal computer. In addition, Centillion admits that Qwest customers are not obligated or contractually bound to perform additional processing on individual

transaction records provided by Qwest. Rather, Qwest's customers independently determine whether or not to perform additional processing on individual transaction records. Ultimately, there is no evidence upon which a finder of fact could reasonably rely to conclude Qwest constitutes a "mastermind" under *Muniauction*. 532 F.3d at 1329. Finally, Centillion admits that Qwest's customers do not exercise control or direction over the performance of every step of method claim 47 of the '270 patent. Pl.'s Br., Dkt. No. 655 at 17.

The Court concludes that there are no genuine issues of material fact, and that Qwest is entitled to judgment as a matter of law on Centillion's claims for infringement of claim 47. Therefore, Qwest's Motion for Summary Judgment of Non-infringement (Dkt. No. 617) on claim 47 is **GRANTED**. Centillion's Motion for Summary Judgment of Infringement (Dkt. No. 616) on claim 47 is **DENIED**.

IV. CONCLUSION

For the foregoing reasons, plaintiff/consolidated defendant's, Centillion Data System, LLC, and consolidated defendant's, CTI Group (Holdings), Inc., Motion for Partial Summary Judgment (Dkt. No. 613) is **GRANTED** and Motion for Partial Summary Judgment of Infringement (Dkt. No. 616) is **DENIED**. Defendants/consolidated plaintiffs', Qwest Communications International, Inc. and Qwest Corporation, Motion for Summary Judgment of Invalidity of the '270 Patent is **DENIED**; Motion for Summary Judgment of Noninfringement is **GRANTED**, and Motion to Strike (Dkt. No. 721) is **DENIED**. All other pending motions are **DENIED AS MOOT**. The Court will enter judgment accordingly.

IT IS SO ORDERED this 29th day of October, 2009.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

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Subject: Activity in Case 1:04-cv-00073-LJM-DML CENTILLION DATA SYSTEMS, LLC v. BELLSOUTH CORPORATION et al Order

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Southern District of Indiana
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Case Name: CENTILLION DATA SYSTEMS, LLC v. BELLSOUTH CORPORATION et al
Case Number: 1:04-cv-73
Filer:
Document Number: 828

Docket Text:

AMENDED ORDER re [827] Order. Signed by Judge Larry J. McKinney on 10/29/2009. (TRG)

1:04-cv-73 Notice has been electronically mailed to:

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10/29/2009

A1344

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10/29/2009

A1345

time, the user causes the back-end processing to perform its function on a monthly basis. Like the on-demand operation, the back-end processing in normal operation is performed in response to a customer demand. The difference though is that a single customer demand (the act of subscribing to the service) causes the back-end processing monthly. But in both modes of operation, it is the customer initiated demand for the service which causes the back-end system to generate the requisite reports. This is "use" because, but for the customer's actions, the entire system would never have been put into service. This is sufficient control over the system under *NTP*, and the customer clearly benefits from this function.

Because the district court concluded as a matter of law that no single party could be liable for "use" of the patented invention, it did not compare the accused system to the claim limitations. We note that, although the customers "use" the system as a matter of law, this does not settle the issue of infringement. We will not decide, as Qwest requests, whether the accused products satisfy the "as specified by the user" limitations for the first time on appeal. Likewise, we decline to determine for the first time on appeal whether any individual customer has actually installed the Qwest software,² downloaded records, and analyzed them as required by the claims.³ Because the issue has not been raised on appeal here, we

² Centillion concedes that in order to infringe, the customer must install Qwest's client software. Appellant's Br. 31.

³ For purposes of its indirect infringement case, Qwest also asks us to determine that the accused products have substantial noninfringing uses. The district court did not address this issue in its opinion and we decline to perform this factual inquiry for the first time on appeal.

3. The Federal Circuit further declined to determine whether any of Qwest's customers actually installed the Qwest software, downloaded records, and analyzed them as required by the claims. *Id.* at 1286. This would be an important determination whether Qwest's customers directly infringed on Centillion's patent. Notably, Centillion conceded that "to infringe, the customer must install Qwest's client software." *Id.* at 1286 n 2.

4. The Federal Circuit finally declined to address whether Qwest induced infringement by a customer. *Id.* "In order to succeed on a claim of inducement, the patentee must show, first that there has been direct infringement," and "second, that the alleged infringer knowingly induced infringement and possessed specific intent to encourage another's infringement." *Minn. Mining & Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1304-1305 (Fed. Cir. 2002). "[T]here can be no contributory infringement without the fact or intention of a direct infringement." *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526; 92 S.Ct. 1700; 32 L.Ed.2d 273 (1972).

Because the foregoing issues have not been fully addressed, another round of dispositive motions will be appropriate in this case. However, the parties arguments in said dispositive motions shall be limited to those issues identified in the Federal Circuit's ruling.

The Court being fully advised on the matter hereby sets forth the following scheduling order. Dispositive motions shall be filed within 28 days of the entry of this Order, and the parties shall comply with Local Rule 56.1 with respect to any and all related

summary judgment filings. Any subsequent scheduling matters, including a discovery schedule, will be addressed after the district court rules on the parties' dispositive motions. Centillion's motion for pretrial conference is therefore **GRANTED** to the extent that the dispositive motion deadline has been set.

Dated: 08/12/2011



Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
)
 Plaintiff,)
)
 v.)
)
 CONVERGYS CORPORATION, QWEST)
 COMMUNICATIONS INTERNATIONAL)
 INC., and QWEST CORPORATION,)
)
 Defendants.)
)
 _____)

Case No. 1:04-CV-00073-LJM-DKL

QWEST CORPORATION AND QWEST)
 COMMUNICATIONS CORPORATION,)
)
 Consolidated Plaintiffs,)
)
 v.)
)
 CENTILLION DATA SYSTEMS, LLC, and CTI)
 GROUP (HOLDINGS), INC.,)
)
 Consolidated Defendants.)
)
 _____)

Case No. 1:04-CV-2076
[Consolidated with above]

**ORAL ARGUMENT
REQUESTED**

**PLAINTIFFS CENTILLION DATA SYSTEMS, LLC'S AND CTI GROUP (HOLDINGS),
INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT**

Plaintiffs, Centillion Data Systems, LLC ("Centillion") and CTI Group (Holdings), Inc., by counsel and pursuant to Fed. R. Civ. P. 56, hereby move this Court for an Order granting partial summary judgment of infringement by the defendants, Qwest Communications International, Inc., Qwest Corporation, and Qwest Communications Corporation (hereinafter collectively referred to as "Qwest"), of claims 1 and 8 of Centillion's U.S. Patent No. 5,287,270 (the "270 patent"). There is no genuine dispute as to any material fact with respect to Qwest's

infringement of claims 1 and 8 of the '270 patent, and Plaintiffs are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

Plaintiffs ground this Motion on the Declaration of Jack D. Grimes, Ph.D., and exhibits thereto, and its Brief in Support and exhibits thereto, served and filed herewith, and on all the pleadings, records, and files in the above-captioned proceeding.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Motion for Partial Summary Judgment of Infringement, together with all other relief appropriate under the circumstances.

Centillion has requested oral argument on this Motion by separate instrument served and filed herewith, pursuant to S.D. Ind. L.R. 7.5(a).

DATED: September 16, 2011

Respectfully submitted,

/s/ Phillip J. Fowler

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*Attorneys for Plaintiffs/Counterclaim
Defendants Centillion Data Systems, LLC
and CTI Group (Holdings), Inc.*

CERTIFICATE OF SERVICE

I certify that on September 16, 2011, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system, as follows:

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Material Subject to Protective Order Deleted

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A2100 – A2101

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A2929 – A2934

Material Subject to Protective Order Deleted

A2940

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-cv-0073-LJM-DKL
)	
Plaintiff,)	
)	
v.)	
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC., and QWEST)	
CORPORATION,)	
)	
Defendants.)	
<hr/>		
QWEST CORPORATION; QWEST	)	Case No. 1:04-cv-2076
COMMUNICATIONS CORPORATION,	)	<i>(consolidated with above)</i>
)	
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC;)	
)	
Consolidated Defendant.)	
)	
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**DEFENDANTS QWEST COMMUNICATIONS INTERNATIONAL, INC. AND QWEST
CORPORATION, AND CONSOLIDATED PLAINTIFFS QWEST CORPORATION
AND QWEST COMMUNICATIONS CORPORATION'S MOTION FOR SUMMARY
JUDGMENT OF NON-INFRINGEMENT**

Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Company, LLC, formerly known as Qwest Communications Corporation (collectively, "Qwest"), by their attorneys, respectfully request entry of an Order granting summary judgment of noninfringement. In support of this motion, Qwest is concurrently filing a Memorandum of Points and Authorities, the Declaration of Vincent J. Belusko, and the Declaration of Venkat Ashok.

WHEREFORE, Qwest prays for entry of an Order granting summary judgment of noninfringement of the asserted claims 1, 8, 10, and 46 of the '270 patent.

Dated this 16th day of September, 2011.

/s/ Vincent J. Belusko

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CERTIFICATE OF SERVICE

I certify that on September 16, 2011, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system:

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Counsel for Plaintiff, Centillion Data Systems, LLC

/s/ Vincent J. Belusko
Vincent J. Belusko

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-cv-0073-LJM-DML
)	
Plaintiff,)	
)	
v.)	
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC., and QWEST)	
CORPORATION,)	
)	
Defendants.)	
<hr/>		
QWEST CORPORATION; QWEST	)	Case No. 1:04-cv-2076
COMMUNICATIONS CORPORATION,	)	<i>(consolidated with above)</i>
)	
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC;)	
CTI GROUP HOLDINGS, INC.,)	
)	
Consolidated Defendants.)	
<hr/>		

**DECLARATION OF VINCENT J. BELUSKO IN SUPPORT OF DEFENDANTS QWEST
COMMUNICATIONS INTERNATIONAL, INC. and QWEST CORPORATION, AND
CONSOLIDATED PLAINTIFFS QWEST CORPORATION AND QWEST
COMMUNICATION'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT OF INFRINGEMENT**

The "data processing means" cannot be satisfied by the user's PC, as it would require eliminating the requirements of both the "means for transferring" elements. Dr. Grimes fails to cite any evidence of a "means for transferring" from the "storage means" to the user's PC. Further there can be no "means for transferring" from the "data processing means" to the user's PC if the user's PC is itself the "data processing means." The same user's PC cannot satisfy both the "data processing means" and the "personal computer data processing means". Similarly, if the user's PC were the "data processing means, it would eliminate the requirement that the "data processing means" organize "summary report" into a format for storage, manipulation and display on a personal computer "data processing means."

Element 1f:

Dr. Grimes has not distinguished between the individual transaction records and summary reports generated from said individual transaction records, both of which must be transferred from the data processing means to the personal computer data processing means.

Element 1g:

Dr. Grimes has presented no evidence of a personal computer data processing means that has been adapted to perform more action upon or further manipulating the individual transaction records. Further, there is no evidence of any customer actually loading the Qwest Logic client application.

B. Qwest's eBill Companion

1. Description

The eBill Companion System ("eBC") uses information from applications and devices that perform various functions in Qwest Telecommunication system in order to provide a service customer with raw un-edited customer call data. Most of these applications are not dedicated to eBC.

DMS Switch

This is a switch of the type discussed in section III of this report. It is where the calls are switched to other networks and/or phones on the same network. The switches output call detail records.

Billing Record Collection

The function of Billing Record Collection is to ensure timely and accurate delivery of data from the DMS switches to Qwest's central rating and billing system.

LATIS

LATIS stands for LCI's Advanced Telecommunications Information System. This system is responsible for rating for QWEST customers. LATIS creates an invoice FEED file that contains rated call information for all subscribers within the billing cycle.

BDS Data Store

The BDS Data Store contains data in a binary flat file that is created by the BDS batch processing with data from the LATIS feed files. The BDS interactive application accepts requests and returns data from the BDS Data Store in an XML stream.

eBC Back Office

eBC Back Office is an application that is responsible for submitting a list of eBill Companion accounts to BDS Interactive for the current billing cycle. Data contained in the XML stream is used to create the eBill Companion file pairs. These 13 files pairs contain subscribers raw call data and rated call information in no particular order. The file pairs consist of a .txt (text) file and a .fmt (format) file. The files that are designated to be delivered to a customer on CD are sent to an outside vendor who places them on a CD and mails them to the customer. The files that are going to be downloaded by the customer are left on a server called the QPID download server. For all download customers an email is dispatched to them letting them know that their file is available for download at their convenience.

It is important to note that the data sent to eBill Companion subscribers is not the bill of record. Specifically the data sent may not yield the same totals that are displayed on a subscriber's bill. The paper bill is considered the bill of record for any customer.

2. *eBill Companion does not meet all the elements of any of the asserted claims.*

It is my opinion that eBill Companion does not infringe Claims 1, 8, 10, 46, and 47 of the '270 Patent. While my non-infringement rebuttal chart goes into detail on each element of the asserted '270 Patent claims, below is a summary of my opinions.

eBill Companion does not infringe for the following reasons:

Element 1b:

Dr. Grimes does not point to any specific "storage means." Specifically, Dr. Grimes does not point to any specific means for storing individual transaction records prepared by said service provider relating to individual transaction records.

Element 1c & e:

eBill Companion does not perform the functions of:

- (1) generating preprocessed summary reports
- (2) organizing said summary reports into a format for storage, manipulation, and display on a personal computer data processing means.

eBill Companion does not have structure that is the same or equivalent to a computer that is programmed to

- segregate data by customer and record type,
- to edit and accumulate data to produce reports,
- create database table and additional records for storage.

Dr. Grimes provides no evidence of an accused structure that may be equivalent to the disclosed structure for the "data processing means;" he identifies no accused structure that performs the identical function in substantially the same way with substantially the same result.

Dr. Grimes erroneously points to the 13 file pairs as being database tables. The file pairs consist of a .txt (text) file and a .fmt (format) file. The file extension .txt stands for text, and the data in the file is in the form called ASCII (basically the letters on a keyboard); the values of the individual transaction records are separated by a common value, in this case a "~". The file extension .fmt stands for format, and identifies the types of data present in the .txt file. As implicitly acknowledged by Dr Grimes, the file pairs are not themselves database tables: "eBC Back Office ... create [s] file pairs ... which are later loaded by the eBC client application into the SQL server database of the eBC client application." [Grimes report, Exh. 2, p. 7.] The data in the file pairs can then be processed by the eBC client application hosted on the customer's PC; only at that point can a database table be created by the eBC client application in combination with a SQL Server database.

Element 1d:

Dr. Grimes has failed to point to any specific evidence that eBill Companion contains structure for performing the function of transferring at least part of said individual transaction records from said storage means to said data processing means. The "means for transferring" is important because of the "from" and "to" relationship described within the Courts claim construction. Data, in this case ITRs, are transferred from storage means, where the data is stored, to data processing means, where the work (processing) is done.

Element 1e:

eBill Companion does not generate any report that comprises a collection of analyzed and/or reorganized data.

Dr. Grimes has not provided any evidence of any service customer selecting or making specific the character of a report. He points to three possible ways in which service customer allegedly selects or makes specific the character of a report.

"Customizations" - Dr. Grimes erroneously indicates that "Qwest can customize ... reports at the request of the customer." (Grimes's Report, Exh. 2, p. 8) This reflects a misunderstanding of the evidence cited. Due to the demands of maintaining multiple versions of software and supporting customers, Qwest rarely updates the eBill Companion features. However, Qwest accepts suggestions from customers and considers these suggestions when updating features of its software. Not all of these suggestions are either original to the customer, nor are they necessarily incorporated into the software updates. In fact relatively few of the suggestions are ever incorporated.

Project Account Code ("PAC") - The structure of the data files provided to eBill Companion customers always contains the PAC field. This does not depend on whether a customer actually utilizes the PAC feature. If a service customer does utilize the PAC feature, this data flows through the switch and becomes part of the CDR in the same way as the telephone number called. By utilizing the PAC feature, a service customer does not select or make specific the character of a collection of analyzed and/or reorganized data.

On Demand - The structure of the data files provided to eBill Companion customers that utilize On Demand does not change. At best, the On Demand feature performs a segregation of call data. A customer can only choose to receive data from one billing cycle at a time. This is

generally used to receive backup of previously received data. By utilizing the On Demand feature, a service customer does not select or make specific the character of a collection of analyzed and/or reorganized data.

Dr. Grimes has not provided any evidence of individual transaction records being transferred from said storage means, or organizing summary reports into a format for storage and manipulation and display on a personal computer.

The “data processing means” cannot be satisfied by the user’s PC, as it would require eliminating the requirements of both the “means for transferring” elements. Dr. Grimes fails to cite any evidence of a “means for transferring” from the “storage means” to the user’s PC. Further there can be no “means for transferring” from the “data processing means” to the user’s PC if the user’s PC is itself the “data processing means.” The same user’s PC cannot satisfy both the “data processing means” and the “personal computer data processing means”. Similarly, if the user’s PC were the “data processing means, it would eliminate the requirement that the “data processing means” organize “summary report” into a format for storage, manipulation and display on a personal computer “data processing means.”

Element 1f:

Dr. Grimes has not distinguished between the individual transaction records and summary reports generated from said individual transaction records, both of which must be transferred from the data processing means to the personal computer data processing means.

Element 1g:

Dr. Grimes has presented no evidence of a personal computer data processing means that has been adapted to perform more action upon or further manipulating. Further, there is no evidence of any customer actually loading Qwest eBill Companion client application.

C. Qwest Control portal

1. Description

Qwest Control is a web portal that presents information from diverse sources in a unified way, and provides access to numerous of resources. It allows Qwest business to subscribers to launch applications such as contact request, repair request, repair request status, billing inventory, configuration statistics, service administration, toll free products, customer service and a number of service related functions.

2. Qwest Control portal does not meet all the elements of any of the asserted claims.

It is my opinion that Qwest Control does not infringe Claims 1, 8, 10, 46, and 47 of the ‘270 Patent. While my non-infringement rebuttal chart goes into detail on each element of the asserted ‘270 Patent claims, below is a summary of my opinions.

Qwest Control is a web portal it does not perform the functions of any accused claims. It is not responsible for any call details, billing, or analysis. It is merely a portal to many applications and functions for Qwest business customers.

accused Qwest applications. Dr. Grimes himself admits that there are multiple applications that can be accessed through the Qwest Control and the Qwest Remote Control portals. See also, deposition of John Birbeck, November 11, 2008 pp. 96 – 110. These additional non-accused and non-infringing applications are substantial non-infringing alternatives. For example, through Qwest Control and Qwest Remote Control users can contact request, repair request, repair request status, service administration, toll free products, and customer service.

The asserted claims require that the “the service customer selects, or makes specific, the character of” a report. Even assuming for the sake of argument that the system provides the ability for a customer to select Project Account Code (“PAC”), Department Code, or “On Demand files,” the infringement requires more. Not only must the system have the ability, but the customer must actually “select, or make specific, the character of” a report. Thus, there are substantial non-infringing uses that include every instance where the service customer does not select, or make specific, the character of a report. Indeed, the majority of CDRs processed by the accused products do not utilize any of the above referenced features:

- Project Account Code – Only a very small percentage of CDRs processed by eBill Companion or Logic are for customers that utilize the PAC feature.
- Department Code – Only a very small percentage of CDRs processed by eBill Companion or Logic are for customers that utilize the Department Code feature.
- On Demand – The majority of CDRs processed by eBill Companion are not processed through the On Demand feature.

Further, there exist substantial non-infringing uses for the data files that are provided to the customer by both Logic and eBill Companion. For example, these data files can readily be used by customers to either display or print out the data received without further analysis or manipulation. Additionally, the retention policies of many companies require the archival of telecommunications records for a certain period of time. Companies receiving Logic or eBill Companion data files through the Internet or via CDROM could meet their company retention policy requirements by simply storing these data files. This does not require further manipulation of the data files once they are received. All of these uses are substantially non-infringing which prevent Qwest from being a contributory infringer.

The claims also require a personal computer data processing means that has been adapted to perform more action upon or further manipulating. There plainly exist substantial non-infringing uses; a personal computer data processing means need not be so adapted.

B. No Evidence of Inducement

For inducement the encouraged act(s) must constitute direct infringement. Further, the inducing entity must have been aware of the patent, and known or should have known that the encouraged acts constituted infringement of that patent.

Dr. Grimes has not presented any evidence that any entity has ever practiced each and every element of any of the asserted claims. Further, given that, as discussed above, a person of

Serial No. 07/ 984,374
Art Unit 2311

-4-

104 and TC09-001-303. It would have been obvious to one of ordinary skill in the art at the time the invention was made to generate phone/usage data through the use of software programs because of the volume of billing makes it nearly impossible to do it any other way.

It is well known that the following can be found on a telephone bill or through the telephone company by special request: cost, usage, length of time, carrier through which the call was billed, the code for the carrier through which the call was billed, summary of call billed, one carrier summary record, identify customer location through which call was placed, summary of calls placed from each customer location, one site code summary record, originating station number, date call was placed, time call was placed, locality call was terminated, political region call was terminated, terminating station number to which call was placed, geographical area to which call was placed, geographical area code summary record, project accounting code, summary to which project accounting code was attributed, billing classification code, call cost association, miscellaneous information and identifying station number. Because it is so well known that the aforementioned information can be found on a telephone bill or through the telephone company, it would have been obvious to include them in a telecommunications system. The following are well known and therefore do not add any patentable weight: preparing summary reports and graphs, reorganizing data into table format, RBASE



#7/B
B. Turner
7/28/93

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of Hardy et al.
Serial No.: 07/984,374
Filed: December 2, 1992
Title: BILLING SYSTEM
Examiner: L. Brutman
Group Art Unit: 2311

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE U.S. POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231 ON 6/30/93

James B. Reardon

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

AMENDMENT UNDER 37 C.F.R. 1.115

This is in response to the Office Action dated March 2, 1993. Please amend the above-identified application as follows:

IN THE CLAIMS:

Please rewrite claim 41 as follows:

Cl 41 (Amended) A system for presenting information concerning the actual cost of a service provided to a user by a service provider, said system comprising:
/ storage means for storing individual transaction records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

✓ ^I data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

^{II} means for transferring at least a part of said individual transaction records from said storage means to said data processing means;

^{III} said data processing means generating preprocessed summary reports as specified by the user [selecting,] from said individual [service provider] transaction records transferred from said storage means and organizing said summary reports [, records relating to service usage and exact charges for said user and performing on said records preprocessing operations including formatting and analyzing of data from said selected records to reorganize said data] into a format [form] for storage, manipulation and display on a personal computer data processing means;

^{IV} means for transferring said individual transaction [selected] records including said summary reports [reorganized data] from said data processing means to said personal computer data processing means; and

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said personal computer data processing means being adapted to perform additional processing on said individual transaction [selected] records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said selected records including said exact charges actually billed to said user.

Please rewrite claim 48 as follows:

32
§ 48. (Amended) A system for presenting, under control of a user, usage and actual cost information relating to telecommunications service provided to said user by a telecommunications service provider, said system comprising:
telecommunications service provider [carrier] storage means for storing records prepared by a telecommunications service provider [carrier] relating to telecommunications usage for one or more telecommunications subscribers including said user, and the exact charges actually billed to said user by said service provider for said usage;
data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;
means for transferring at least a part of the records from said service provider [carrier] storage means to said data processing means;

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said data processing means generating preprocessed summary reports as specified by the user [selecting,] from said telecommunications usage [transferred] records transferred from said storage means and organizing said summary reports [, records relating to telecommunications usage and exact charges for said user and performing on said selected records preprocessing operations including formatting and analyzing of data from said selected records to reorganize said data] into a format [form] for storage, manipulation and display on a personal computer data processing means;

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means for transferring said telecommunications usage [selected] records including said summary reports [reorganized data] from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said telecommunications [selected] records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said telecommunications usage [selected] records including said exact charges actually billed to said user.

(Please rewrite claim 49 as follows:)

49. (Amended) A method for presenting information on a personal computer data processing means concerning the actual cost of a service provided to a user by a service provider, said method comprising:

2 storing individual transaction records prepared by said service provider on a storage means, said transaction records relating to individual service transactions for at least one service customer including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

transferring at least a part of said transaction records from said storage means to a data processing means;

generating preprocessed summary reports as specified by the user [selecting] from said individual [transferred] transaction records transferred from said storage means and organizing said summary reports [, records relating to service usage and exact charges actually billed said user by said service provider via a data processing means and performing preprocessing operations on said selected records including formatting and analyzing data from the selected records in said data processing means to reorganize said data] into a format [form] for storage, manipulation and display on a personal computer data processing means;

transferring said preprocessed individual transaction [selected] records including said summary reports [reorganized data] from said data processing means to at least one personal computer data processing means;

performing additional processing of said individual transaction records [data] on said at least one personal computer data processing means utilizing said summary reports for expedited retrieval of data; [and]

presenting a subset of said individual transaction [selected] records chosen via said at least one personal computer data processing means including said exact charges actually billed to said user; and

said data processing means and said at least one personal computer processing means comprising respective computation hardware means and respective software programming means arranged for directing the activities of said computation hardware means.

REMARKS

The courtesy of Examiners Brutman and Cosimano in regard to the Interview conducted on May 27, 1993 concerning the subject patent application is gratefully acknowledged.

As a result of that Interview, applicants have amended the claims in the application to more distinctly and accurately identify the salient features of the present invention.

For example, independent claims 41, 48 and 49 have been amended along with their dependent claims 3-40, 42-47 and 50-87 to further emphasize and clarify the unique characteristics of and the benefits derived from the preprocessing of data transferred from a service provider to a service user.

Specifically, in the present invention, the data which includes the exact charges for services rendered by a service provider to a service user is preprocessed (for example, on a mainframe computer) to generate "summary reports as specified by the user" which enable display and further processing of the data on a personal computer. Very significantly, the summary reports generated by preprocessing are utilized after the data is transferred to a personal computer to expedite or enhance the rate of retrieval of desired data for presentation on the personal computer. Regarding the data presented on the personal computer, it should be noted that in accordance with the present invention disclosed and claimed herein, this data includes the exact charges actually billed to the user as opposed to prior art estimates of such charges.

None of the prior art systems cited by the Examiner or any other prior art systems, disclose, teach or suggest preprocessing of data and, particularly data which includes the exact charges billed to the service user by a service provider, in a manner as disclosed and claimed herein which enables expedited, rapid retrieval and presentation of desired data on a personal

computer. Specifically, the prior art systems as exemplified by the prior art cited herein either:

1. Utilized non-preprocessed data for display on a personal computer (usually for low volume analysis) which resulted in very slow processing times (e.g., about 24-48 hours in certain instances); or
2. Utilized mainframe computers for handling high and relatively high volume analysis with all processing of the data being performed on the mainframe either in-house or by a service bureau; no preprocessing of data was performed and personal computers were used, if at all, only as collectors of data.

Thus, it is submitted that none of the systems prior to the present invention, preprocessed data in the sense of providing summary reports as specified by the user in a format enabling storage, manipulation and display on a personal computer and in a manner such that the summary reports would be utilized in the personal computer to expedite retrieval of desired data.

Additionally, it should be noted that none of the prior systems were capable of providing the exact charges actually billed to a user employing a personal computer as the processing unit in the system. Admittedly, such data could have been derived from a mainframe directly. However, one of the essential features of the present invention is the ability to replace mainframe computers and their attendant costs and expenses for maintenance and operation with personal computers.

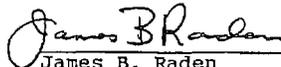
In support of applicant's representations herein and in accordance with agreement reached with the Examiners during the interview, applicants are submitting herewith an executed Declaration from Daniel D. Briere, a recognized authority in this field, attesting to the accuracy of the disclosure of the present application in describing the product of this invention as commercialized in 1989 and, further, supporting applicants' allegations concerning the unique and unexpected characteristics and features of the claimed invention relative to the state of the art at the time of the invention. Also, submitted herewith is the Declaration of Robin Loyed, an executive of Sprint Communications Company, L.P., attesting to the long felt need in the industry for applicants' product and to the commercial success which the product has achieved in the marketplace from the time of its introduction in 1989.

In view of the foregoing, it is believed that the prior art cited in the Office Action does not anticipate or render obvious the invention disclosed and claimed herein since the art of record does not teach or suggest the systems or methods provided herein for achieving the claimed results. Furthermore, it is submitted that there is no motivation or suggestion presented in any of the cited references which would lead one skilled in the art to modify the systems and methods taught therein to accomplish the claimed results utilizing the claimed procedures of the present invention.

For example, the use of a preprocessing step as employed herein to enable data retrieval on a personal computer at a commercially acceptable rapid rate of speed is not taught or suggested by the prior art. Applicants respectfully submit that impetus for modification of the teachings of the prior art to provide for such preprocessing of data would only result from use of hindsight arising from a review of applicants' invention. As demonstrated by the enclosed Declarations, no such modification in prior art systems was made prior to the present invention since a long felt need for this product existed and was not satisfied until the commercial introduction of the claimed product in 1989.

Accordingly, it is respectfully submitted that the present invention as disclosed and claimed herein is patentably distinguishable over the art of record and, upon reconsideration, the rejection of all of the claims in the application (i.e., claims 3-87) under 35 USC 103 should be withdrawn and this application should be passed to issuance.

Respectfully submitted,



James B. Raden
Attorney for Applicant
Reg. No. 24,594

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
) Case No. 1:04-cv-0073-LJM-DKL
) *Plaintiff,*)
))
v.)
))
QWEST COMMUNICATIONS)
INTERNATIONAL, INC., and QWEST)
CORPORATION,)
) *Defendants.*)

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,) Case No. 1:04-CV-2076
) *(consolidated with above)*)
) *Consolidated Plaintiffs,*)
))
v.)
))
CENTILLION DATA SYSTEMS, LLC and CTI)
GROUP (HOLDINGS), INC.,)
) *Consolidated Defendants.*)
-----x

**EXHIBIT F, PARTS ONE AND TWO, TO DECLARATION OF VENKAT ASHOK IN
SUPPORT OF QWEST PARTIES' OPPOSITION TO PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT**

Dated this 17th day of October, 2011.

/s/ Vincent J. Belusko
Vincent J. Belusko (*pro hac vice*)
Hector G. Gallegos (*pro hac vice*)
E. Dale Buxton (*pro hac vice*)
MORRISON & FOERSTER LLP
555 West Fifth Street, Suite 3500
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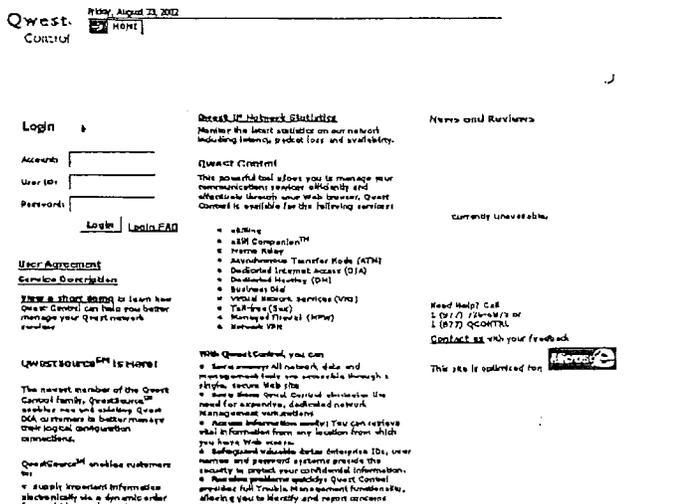
James W. Riley, Jr.
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Chapter 4: Downloading and Importing Call Data

Completing an On-Demand Data Request{ XE "Completing an On-Demand Data Request" }

Introduction Customers can request an on-demand data file be created for them through the Qwest Control® website. After making the request, an e-mail will be sent to you when the data file is ready to be downloaded.

Procedure Complete the following steps to complete an on-demand data request:

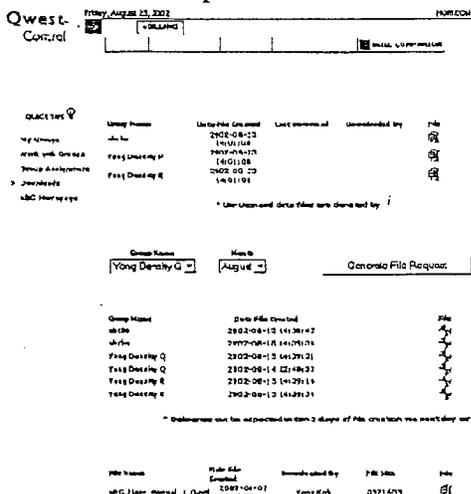
Step	Action
1	<p>From the File menu in eBC, click Download Call Data.</p> <p>Result: Your Web Browser opens and the Qwest Control® Login page appears.</p> 
2	<p>Note: It will be necessary to have your User ID, Qwest Control® Master Account ID, and Password information to login to the Qwest Control® site. If you do not have this information, you will be required to register your account on the site before you can proceed.</p> <p>In the Account field, type your master account ID</p>

Continued on next page

Chapter 4: Downloading and Importing Call Data

Completing an On-Demand Data Request, Continued

Procedure (continued)

Step	Action
8	<p>To download a file, click Downloads on the left navigation bar or click on Available File Downloads in the Summary section of the screen.</p> <p>Result: The eBill Companion™ Download window appears.</p> 
9	<p>In the On-Demand Data Files section, select the group and month for which you wish to create on-demand data, and then click the Generate File Request button.</p> <p>Result: You will receive a message in the window either confirming your request or telling you that errors were encountered.</p>
10	<p>If you receive your data via download, you will receive an email when the requested data is available.</p>

Material Subject to Protective Order Deleted

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-CV-00073-LJM-DKL
)	
Plaintiff,)	
)	
v.)	
)	
CONVERGYS CORPORATION, QWEST COMMUNICATIONS INTERNATIONAL INC., and QWEST CORPORATION,)	
)	
Defendants.)	
)	

<hr style="border: 0.5px solid black;"/> QWEST CORPORATION AND QWEST COMMUNICATIONS CORPORATION,	)	Case No. 1:04-CV-2076 [Consolidated with above]
)	
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC, and CTI GROUP (HOLDINGS), INC.,)	
)	
Consolidated Defendants.)	
)	

CENTILLION’S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff, Centillion Data Systems, LLC (“Centillion”), hereby submits as supplemental authority a recent en banc Federal Circuit opinion styled *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2012 U.S. App. LEXIS 18532 (Fed. Cir. Aug. 31, 2012) (per curiam). (A copy of the slip opinion is attached hereto as Exhibit A.) This decision relates to the parties’ pending motions for summary judgment in the above-captioned litigation.¹

¹ See Cent. Mot. for Partial Summ. J. of Infringement, Sept. 16, 2011, ECF No. 871; Qwest’s Mot. for Summ. J. of Non-Infringement, Sept. 16, 2011, ECF No. 880.

In *Akamai*, the Federal Circuit:

1. Overruled *BMC Resources, Inc. v. Paymentech, L.P.*, 498 F.3d 1373 (Fed. Cir. 2007), insofar as it required that liability for induced infringement be predicated on a finding that a “single entity” directly infringed the patent. *Akamai*, slip op. at 10;
2. Explained that the issue of “divided infringement” typically arises only with respect to method claims. *Id.* slip op. at 9-10 (contrary to Qwest’s repeated assertions that *BMC*’s single-entity rule applied equally to both system and method claims); and
3. Clarified that, in the case of product or system claims – as in the case at bar – “the party that adds the final element to the combination ‘makes’ the infringing product and is thus liable for direct infringement even if others make portions of the product.” *Id.* slip op. at 31; *see also id.* at 10 (“the entity that installs the final part . . . thereby completes the claimed invention [and] is a direct infringer”).

By overruling *BMC*, the Federal Circuit has removed the legal underpinnings of Qwest’s Motion for Summary Judgment of Non-Infringement. *See* Qwest Br. in Support of Mot. for Summ. J. of Non-Infringement 17, Sept. 16, 2011, ECF No. 884 (“Indirect infringement requires, as a predicate, a finding that some party amongst the accused actors has committed the *entire act* of direct infringement”; quoting *BMC*, 498 F.3d at 1379) (emphasis added). Accordingly, in view of the Federal Circuit’s decision in *Akamai*, Qwest’s motion for summary judgment should be denied as based on a now-rejected legal premise.

In addition, *Akamai* undermines the factual premise of Qwest’s motion. In its prior ruling reversing the grant of summary judgment in Qwest’s favor in this case, the Federal Circuit distinguished *BMC*’s single-entity rule, reasoning that Qwest’s customers directly infringed by using the system as a whole. *Centillion Data Sys., LLC v. Qwest Commc’ns Int’l, Inc.*,

631 F.3d 1279, 1285 (Fed. Cir. 2011) (“Because there is a single user, there is no need for the vicarious liability analysis from *BMC* or *Cross Medical [Products v. Medtronic Sofamor Danek, Inc.]*, 424 F.3d 1293 (Fed. Cir. 2005)”). Given that *BMC* has now been overruled, Centillion is no longer constrained to rely exclusively on the “use” theory of infringement in order to distinguish *BMC*.

Indeed, when the issue of direct infringement is considered under the “make” prong of § 271(a), the factual premise of Qwest’s pending motion for summary judgment – that there is allegedly “no evidence” of Qwest customers putting the system into use – is irrelevant. As explained by the Federal Circuit in *Akamai*, direct infringement under the “make” prong merely requires a party to complete the claimed invention by installing the final element of the system, in this case, the client application software. *Akamai*, slip op. at 10, 31. As the Federal Circuit noted in its prior opinion in the instant case, “The customer, not Qwest, completes the system by providing the ‘personal computer data processing means’ and installing the client software.” *Centillion*, at 1288.

Given the Federal Circuit’s clarification in *Akamai* regarding infringement of system claims under the “make” prong of the statute, genuine issues of material fact exist not only as to direct infringement by Qwest’s customers based on the “use” prong of the statute, but also because they directly infringe under the “make” prong by installing the client application software on their PCs, which completes the claimed system. Once the system is so completed, direct infringement is established and does not require any party to further put the system into service either by “specifying” something about the summary reports, downloading and processing records, or otherwise using the system in any way.

The *Akamai* decision thus furnishes additional compelling reasons for the Court to deny Qwest's pending motion for summary judgment of non-infringement.

DATED: September 5, 2012

Respectfully submitted,

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(Holdings), Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff)	
)	
vs.)	
	)	1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	

QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
	)	1:04-cv-2076
vs.	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC)	
and CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

ORDER

Pending before the Court are two motions for summary judgment (AMotions®): Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings) Inc.-s (collectively, ACentillion®) Motion for Partial Summary Judgment of Infringement [Dkt. No. 871],¹ and Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation's

¹ Contemporaneously with the Motions, Centillion filed Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings), Inc.-s Request for Oral Argument on Their Motion for Partial Summary Judgment of Infringement [Dkt. No. 879]. Subsequently, the request was renewed in Centillion-s Renewed Motion for Oral Argument on Motions for Summary Judgment [Dkt. No. 921]. The Court has sufficient information to decide the Motions without oral argument and, therefore, **DENIES** Centillion-s requests for oral argument [dkt. nos. 879, 921].

In addition, following the submission of supplemental authority and briefing on the same, Qwest filed its Motion for Leave to File a Sur-Reply to Centillion-s Reply in Support of Its Notice of Supplemental Authority [Dkt. No. 918]. The Court concludes that a surreply is unnecessary given the extensive briefing already file and **DENIES** Qwest-s motion [dkt. no. 918].

collectively, AQwest®) Motion for Summary Judgment of Non-Infringement [Dkt. No. 880]. The Court has considered the parties' arguments and evidence and rules as follows.

I. BACKGROUND

On February 15, 1994, the United States Patent and Trademark Office issued United States Patent No. 5,287,270 (A270 Patent®), titled ABilling System,® to Compucom Communications Corporation. >270 Patent. Broadly speaking, the >270 Patent allows telephone service providers to provide subscribers with detailed call information that can be easily organized and analyzed. *Id.* Following a corporate reorganization, the >270 Patent was transferred to its current owner, Centillion Data Systems, LLC. Dkt. No. 872 at 4 & 2.

A. RELEVANT CLAIMS OF THE >270 PATENT

Centillion accuses Qwest of infringing claims 1, 8, 10, and 46 of the >270 Patent. Dkt. No. 884 at 7 & 2. Those claims recite:

1. A system for presenting information concerning the actual cost of a service provided to a user by a service provider, said system comprising:

storage means for storing individual transactions records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction from said storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said individual transaction records including said summary reports from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said individual transaction records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said selected records including said exact charges actually billed to said user.

* * *

8. A system for presenting, under control of a user, usage and actual cost information relating to telecommunications service provided to said user by a telecommunications service provider, said system comprising:

telecommunications service provider storage means for storing records prepared by a telecommunications service provider relating to telecommunications usage for one or more telecommunications subscribers including said user, and the exact charges actually billed to said user by said service provider for said usage;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of the records from said service provider storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said telecommunications usage records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said telecommunications usage records including said summary reports from said data processing means to said personal computer data processing means;

said personal computer data processing means being adapted to perform additional processing on said telecommunications records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said telecommunications usage records including said exact charges actually billed to said user.

* * *

10. A system as in claim 8 wherein said selected records relating to telecommunications usage and cost comprise at least one telecommunications call detail record corresponding to a unique telecommunications call to be billed to said subscriber, said call having a length determined by said telecommunications carrier.

* * *

46. A system as in claim 8 wherein an information interchange media means in the form of a data communications line is employed for transferring said selected records from said data processing means to said personal computer data processing means.

>270 Patent col.31 l. 39Bcol.36 l. 7.

B. QWEST-S PRODUCTS

Centillion contends that Qwest infringed the >270 Patent through its Logic, eBill Companion, and Insite products (collectively, Accused Products®). Centillion moves for summary judgment only as to the eBill Companion (eBC®) application. Dkt. No. 872 at 12n.5. However, Qwest has moved for summary judgment of non-infringement as to all of the Accused Products. Dkt. No. 884 at 9.

The parties agree that Qwest was aware of the >270 Patent prior to the design and introduction of both Logic and eBC. Dkt. No. 883-6 at 7B8; Dkt No. 881 at ¶ 5. Qwest contends that it attempted to design around the >270 Patent and, as a result, the Accused Products were less robust than desired.® Dkt. No. 884 at 16 & 20. While designing the

Accused Products, Qwest's designers purportedly did not seek legal advice as to whether their design effectively designed around the '270 Patent, instead relying on internal discussions among designers. Dkt. No. 886-5 at 4.

Logic is the predecessor system to eBC and was introduced in 1997; it was discontinued in 2002 except for use by specific customers. Dkt. No. 881 at 2 ¶ 4; Dkt No. 883-6 at 9. Qwest introduced eBC in 2002. Dkt. No. 872-1 at 11. Insite is a product offered to BellSouth customers, and Centillion contends that Insite is functionally identical to both Logic and eBC, see Dkt. No. 828 at 8; see also *Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1281 (Fed. Cir. 2011), therefore, addressing infringement of the Logic and eBC products in detail will resolve the infringement issue with respect to Insite. All of the Accused Products are available to commercial customers. Dkt. No. 883-9 at 5.

There are two parts to either the Logic or the eBC product: a back-end system and the Qwest client application software. Dkt. No. 881 at 2 ¶ 3. See also *Centillion Data Sys.*, 631 F.3d at 1281. The back-end systems collect electronic monthly billing information. Dkt. No. 881 at 2 ¶ 3. Qwest sends the billing information either by CD-ROM or by download to individual customers for their use. *Id.* Qwest customers may choose to install Qwest client application software, such as Logic or eBC, on a personal computer, which allows for additional functionality, but the Qwest software is not necessary to utilize the monthly billing information. Dkt. No. 872-10 at 33. See also *Centillion*, 631 F.3d at 1281. The billing information consists of call detail records (ACDRs®) for each discrete call captured by Qwest's telecom switches. Dkt. No. 872 at 13 & 10; Dkt. No. 881 at 2 ¶ 3. The Accused Products permit display and billing analysis

of long-distance telecommunications usage for particular customers. Dkt. No. 872-10 at 12; Dkt. No. 881 at 2 ¶ 3.

To prepare the billing information sent to customers, the CDRs captured through Qwest's telecom switches are processed in the LATIS systemCa software application that runs on various serversCwhere each CDR is rated to include the exact charges actually billed for a given call. Dkt. No. 872 at 13B14 && 11, 13. This rating process includes application of various promotional pricing and discounts. *Id.* The rated CDRs are stored in several locations in Qwest's architecture, including the Billing Data Server (ABDS®), which is a hard disk device capable of receiving, retaining, and supplying data. *Id.* at 14 & 12. In eBC, from the BDS, CDRs are transferred via data communication lines to eBC Back Office, a software application written in Java and XML, upon request. *Id.* at 14 && 13B14.

Qwest customers may register to use a feature called project account codes or "PACs" in both the Logic and eBC products. PACs allow a customer to insert codes corresponding to particular employees, types of calls, or offices. *Id.* at 7 & 20. A customer using this feature enters the relevant PAC in addition to dialing the relevant telephone number; the PAC data becomes part of the CDR for that call. *Id.* at 6 & 19. In the files created by eBC or Logic, PACs are included for calls on which they are used. *Id.* For calls made without using PACs, the data file includes a null value in the PAC field. *Id.*

In the eBC product, eBC Back Office uses the CDR information to create .TXT files. Dkt. No. 892 at 4 & 6. The .TXT files include a collection of all billing records for a given customer. Information on the .TXT files mirrors that contained in the individual

CDRs. Dkt. No. 881 at 6 & 19. For delivery to customers, the .TXT files are combined with .FMT files, which are manually created by Qwest personnel. Dkt. No. 892 at 4 & 6. The .FMT files, along with aspects of the eBC customer portal, provide the schema for organizing the .TXT files. Dkt. No. 873-4 at 4. All customers receiving billing data through eBC receive the same .FMT files. *Id.* In order to use the billing data in the eBC client application software, a customer must receive both the relevant .TXT and .FMT files. *Id.*

The billing information, sent to the requesting customer as a .zip file, includes the relevant .TXT and .FMT files configured for use in the eBC client application. See generally Dkt. No. 873-8. Qwest does not require that customers receiving this billing information use the eBC client application, and the files may be used in third party applications. Dkt. No. 884 at 13 & 8. Requesting customers receive their billing information at the end of each billing cycle. Dkt. No. 872-10 at 12.

The On-Demand feature was developed by Qwest in 2002. Dkt. No. 881 at 7 ¶ 22. It is not available for users of the Logic product. *Id.* Using the On-Demand feature of the eBC product customers can request billing information for a particular previous time period. Dkt. No. 881 at 8 & 23. Further, Qwest has provided customization of the data provided to some eBC customers, which generally is comprised of additional fields. *Id.* at 8 ¶ 26.

C. PROCEDURAL HISTORY

On January 12, 2004, Centillion brought suit against Qwest in this Court. Dkt. No. 1. On February 14, 2005, the suit was consolidated with a related suit by Qwest against

Centillion, originally filed in the United States District Court for the Western District of Washington and transferred to this Court, seeking a declaratory judgment of non-infringement or invalidity of the '270 Patent. See Dkt. No. 174.

On January 9, 2008, following briefing and argument, the Court issued its Order on Claim Construction (*AMarkman Order*). The Court construed the disputed claim terms as follows:

CLAIM TERM	CONSTRUCTION
Aactual cost [®]	not a claim limitation
Aexact charges actually billed [®]	the rated cost assigned to each individual transaction record
Ameans for storing [®]	a device capable of receiving, retaining, and supplying data
Adata processing means [®]	<p>functions: (1) generating preprocessed summary reports; and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means</p> <p>structure: a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data, and its equivalents</p>
Aas specified by the user [®]	the service customer selects, or makes specific, the character of
Ameans for transferring [®]	<p>functions: (1) transferring at least part of said individual transaction records from said storage means to said data processing means; and (2) transferring said individual transaction records including said summary reports to said personal computing data processing means</p> <p>structure: magnetic tape, disk, or data communication lines, or their equivalents</p>

Additional processing@	more action upon or further manipulating
Aindividual transaction records@	records of discrete events

Dkt. No. 394 at 46.

On October 29, 2009, based on the claim construction set forth in the *Markman* Order and extensive briefing from the parties, the Court issued its Amended Order on summary judgment. See generally Dkt. No. 828. The Court concluded that the '270 Patent is valid, having not been rendered obvious by previously issued patents. *Id.* at 31. The Court further concluded that Qwest was not liable for direct infringement because it neither operated all potentially infringing aspects of the Accused Products nor directed its customers to use the Accused Products in an infringing manner. *Id.* at 34. Because it concluded that there was no underlying act of direct infringement, the Court concluded that Qwest could not be held liable for indirect infringement. *Id.*

Centillion appealed the Court's conclusion of non-infringement to the Federal Circuit. Dkt. No. 852 at 3. On May 2, 2011, the Federal Circuit issued an Order vacating in part, reversing in part, and remanding the case back to this Court. See generally *Centillion*, 631 F.3d 1279. The Federal Circuit concluded that Qwest did not engage in direct infringement. *Id.* at 1286. However, it further concluded that the standard operation of the Accused Products by Qwest's customers constitutes Ause@ for a direct infringement analysis, although it acknowledged that the Ause@ determination was not a complete finding of infringement, as no comparison of the Accused Products and the claim limitations had occurred. *Id.* at 1285. It remanded the case to this Court for a determination as to whether Qwest could be held liable for indirect infringement based on its customers' use of the Accused Products. *Id.* at 1286.

Following remand, the parties filed the present Motions. Centillion requests a finding that Qwest indirectly infringed Claims 1 and 8 of the '270 Patent by providing the eBC application to customers and instructing them as to its use in an infringing manner. Dkt. No. 872 at 41. Qwest requests a finding of non-infringement as to the entirety of the '270 Patent, contending that the Accused Products do not meet all the claim limitations of the '270 Patent and, alternatively, Qwest did not have the requisite *mens rea* for indirect infringement. Dkt. No. 884 at 6B7. Since filing the Motions, the parties have filed a number of supplemental materials. See generally Dkt. Nos. 886, 889, 898, 901, 903, 905, 914B15, 920, 922B26.

The Court includes additional facts below as necessary.

II. STANDARDS

A. SUMMARY JUDGMENT

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); see also *United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267B68 (7th Cir. 1990). Motions for summary judgment are governed by Federal Rule of Civil Procedure 56(a), which provides in relevant part:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Once a party has made a properly-supported motion for summary judgment, the

opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials showing that a material fact is genuinely disputed. FED. R. CIV. P. 56(c)(1). A genuine dispute of material fact exists whenever there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.⁶ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine dispute of material fact exists. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586B87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996). It is not the duty of the Court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying applicable evidence. See *Bombard v. Ft. Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996).

In evaluating a motion for summary judgment, the Court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. See *Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. See *Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. See *Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). If the moving party does not have the ultimate burden of proof on a claim, it is sufficient for the moving party to direct the court to the lack of evidence as to an element of that claim. See *Green v. Whiteco Indus., Inc.*, 17 F.3d 199, 201 & n.3 (7th Cir.

1994). If the nonmoving party fails to establish the existence of an element essential to [her] case, one on which [she] would bear the burden of proof at trial, summary judgment must be granted to the moving party.⁶ *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996).

B. PATENT INFRINGEMENT

Under 35 U.S.C. § 271(a), whoever without authority makes, uses, offers to sell, or sells any patented invention . . . within the United States . . . infringes the patent.⁶ Reviewing whether a particular device or system infringes a patent is a two-step process. See *CAE Screenplates v. Heinrich Fiedler GMBH*, 224 F.3d 1308, 1316 (Fed. Cir. 2000); *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362 (Fed. Cir. 1999). First, the Court must interpret the disputed claims, from a study of all relevant documents,⁶ to determine their scope and meaning. *K-2 Corp.*, 191 F.3d at 1362; see also *Dolly, Inc. v. Spalding & Evenflo Cos., Inc.*, 16 F.3d 394, 397 (Fed. Cir. 1994). Second, the Court must determine if the accused device, system, or process comes within the scope of the properly construed claims, either literally or by a substantial equivalent. See *K-2 Corp.*, 191 F.3d at 1362; *Dolly*, 16 F.3d at 397; *SmithKline Diagnostics v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988). In this case, the first phase of the infringement analysis, claim construction, occurred prior to the instant Motions. See Dkt. No. 394. Therefore, the Court's analysis focuses on the second phase of the infringement analysis.

The patent owner bears the burden of proving infringement. *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1273 (Fed. Cir. 2004). The Federal Circuit has found in this case that Qwest did not engage in direct infringement, either on its own

or through vicarious liability for any infringing acts by its customers. See *Centillion*, 631 F.3d at 1286. The present Motions, therefore, address indirect infringement only. There are two types of indirect infringement: contributory infringement and inducement to infringe. Both types of indirect infringement require an underlying act of direct infringement. *Akamai Techs., Inc. v. Limelight Networks, Inc.*, Nos. 2009-1372, -1380, -1416B17, 2012 WL 3764695, at *4 (Fed. Cir. Aug. 31, 2012) (per curiam) (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341 (1961); *Henry v. A.B. Dick Co.*, 224 U.S. 1, 12 (1912)).

III. DISCUSSION

As an initial matter, the parties disagree as to whether Centillion previously conceded that Qwest's customers must use Qwest's client software to directly infringe, as opposed to inputting data received from Qwest into a third-party application with similar functionality. In its opinion, the Federal Circuit noted in dicta that Centillion concedes that in order to infringe, the customer must install Qwest's client software. *Centillion*, 631 F.3d at 1286n.2. Centillion contends that it made no such concession and maintains that infringement may be found even if customers process records sent from Qwest using a third-party application rather than Qwest's software. However, a review of Centillion's appellate brief convinces the Court that Centillion made such a concession. Dkt. No. 883-1 at 5 (Only if the installation of the eBill Companion client application, the downloading of call data, and its importation into the eBC client application are completed according to Qwest's step-by-step directions are the customers' personal computers

adapted to perform additional processing as set forth in the claims. Centillion may not revoke an admission made before the Court of Appeals on remand to this Court. See *United States v. Cunningham*, 405 F.3d 497, 503B04 (7th Cir. 2005) (stating that a concession made in appellate brief is binding on the party). Therefore, the Court limits Centillion's claims to customers purportedly using Qwest's application, rather than a third-party application, to process records and proceeds accordingly.

A. DIRECT INFRINGEMENT

To prove direct infringement, Centillion must show by a preponderance of the evidence that every limitation of the claim asserted to be infringed has been found in the accused device, either literally or by equivalent. *Cross Med. Prods. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1310 (Fed. Cir. 2005). For terms construed as means-plus-function terms, infringement requires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification. *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 (Fed. Cir. 2006) (citing *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 324 F.3d 1308, 1320 (Fed. Cir. 2003)). A party may prove direct infringement by circumstantial evidence. *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1326 (Fed. Cir. 2009).

As the parties agree, and the Federal Circuit concluded, that Qwest did not directly infringe the '270 Patent, Centillion must show that direct infringement occurred through

Qwest's customers' use of the Accused Products.² The Federal Circuit concluded that Qwest's customers use the Accused Products as a matter of law, but the Court noted that this finding did not conclude the direct infringement inquiry. *Centillion*, 631 F.3d at 1285B86. The Court must still determine whether the Accused Products meet all limitations of the claim terms. *Cross Med. Prods.*, 424 F.3d at 1310. In this type of direct infringement analysis, where the steps allegedly constituting infringement are performed sequentially by numerous non-related actors, rather than a single company or actor, it must be shown that the Accused Products meet all the claim limitations when fully operated and that the Accused Products were indeed operated as such. *Cf. Akamai Techs.*, 2012 WL 3764695, at *4B*5.

1. CLAIM 1

The parties agree that the Accused Products encompass all of the following elements of Claim 1:

A system for presenting information concerning the actual cost of a service

² In one of its supplemental authority submissions, Centillion contends that the Federal Circuit en banc decision in *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2012 WL 3764695 (Fed. Cir. Aug. 31, 2012) (per curiam), undermines the Federal Circuit's previous statement in this litigation that "Qwest does not 'make' the patented invention . . . as a matter of law." See *Centillion*, 631 F.3d at 1288. Centillion argues that it should be permitted to argue that Qwest is a direct infringer through "making" the patented invention. See generally Dkt. No. 922.

Having reviewed *Akamai* and the Federal Circuit's decision in this case, the Court concludes that *Akamai* does not require reevaluation of the Federal Circuit's finding. *Akamai* states that "the party that adds the final element to the combination 'makes' the infringing product and is thus liable for direct infringement even if others make portions of the product." 2012 WL 3764695, at *11. In this case, there is little doubt that Qwest's customers complete the system by installing and using the Accused Products on their PCs. In other words, the final element is added by the customer, not Qwest. *Akamai* does not control clearly enough to justify deviation from the Federal Circuit's clear statement that Qwest is not a direct infringer under either the "use" or "make" standard. See *Centillion*, 631 F.3d at 1288.

Although Qwest still may be held liable as an indirect infringer if Qwest's customers are found to be direct infringers and other legal criteria are met, the Federal Circuit's decision as to Qwest's status as a direct infringer is the law of the case and will be upheld as such.

provided to a user by a service provider, said system comprising:

storage means for storing individual transaction records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction records from said storage means to said data processing means;

....

means for transferring said individual transaction records . . . from said data processing means to said personal computer data processing means

>270 Patent col.31 ll. 39B55, 63B66. In other words, elements one, two, three, and four of Claim 1, as well as a portion of element six, are present in the Accused Products. See generally Dkt. No. 872; see also Dkt. No. 889 at 9.

However, Qwest contends that neither Logic nor eBC contain the other elements of Claim 1. Specifically, Qwest contends that Centillion has not proven that any of Qwest's customers use either Logic or eBC in a manner that satisfies the Aas specified by the user@ limitation of element five of Claim 1. See >270 Patent col.31 l.57. In addition, Qwest contends that the data processing means of the Accused Products do not generate Asummary reports,@ Acreate database tables,@ Aedit data,@ or Asegregate data . . . by record type@ as required by elements five, six, and seven, see *id.* at col.31 ll. 57, 64; col.32 l. 3, as well as the Court's construction of the means-plus-function limitations of the Adata processing means@ term. See Dkt. No. 394 at 31. The Court addresses these contentions in turn.

a. *As specified by the user*

The fifth element of Claim 1 requires Asaid data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means[.]>270 Patent col.31 ll. 56B62. In the *Markman* Order, the Court construed *As specified by the user* to mean *Athe service the customer selects, or makes specific, the character of.* Dkt. No. 394 at 34. Centillion contends that both Logic and eBC satisfy the *As specified by the user* limitation through the use of PACs and that eBC's On-Demand functionality, as well as customizations to the .TXT files made in response to requests by particular customers also satisfy this limitation.

The Court concludes that inclusion of PACs in customer-s billing information does not meet the *As specified by the user* limitation of the fifth element of Claim 1. Qwest-s customers' use of PACs is configured completely outside of the Logic or eBC application framework, and PACs may be used by customers regardless of whether they analyze billing records with Logic, eBC, with a third-party application, or not at all. Dkt. No. 881 at 7 & 20. Customers may enter a PAC when placing a call, but they are not required to do so, and a section for PACs is included in the billing information provided by Qwest in conjunction with Logic or eBC even if customers choose not to enter a PAC. Dkt. No. 891-2 at 15B16. Inclusion of PACs in the billing information generated by Qwest is no different than inclusion of the telephone number dialed, a mere piece of data, and there is little doubt that dialing a particular telephone number does not satisfy the *As specified by*

the user^o limitation. In short, the Court concludes that use of PACs does not meet the Aas specified by the user^o limitation and, as such, the Logic product does not infringe Claim 1 of the '270 Patent.

In addition, the Court concludes Qwest's customization of eBC data files for particular customers does not satisfy the Aas specified by the user^o limitation. Centillion contends that changes made to the .TXT files in response to customer feedback, such as from Wells Fargo, meet the Aas specified by the user^o limitation. However, Centillion concedes that customers who have had their data files customized cannot use the eBC client application software. Dkt. No. 884 at 19 (Statement of Material Facts Not in Dispute ¶ 37 ("SMFND ¶ 37")); Dkt. No. 886 at 13n.10 (stating that Centillion does not dispute Qwest's SMFND ¶ 37, among others). As discussed above, Centillion has already conceded that infringement requires use of the eBC client application software. Therefore, the Court concludes that any Acustomization^o of eBC data files alleged by Centillion does not meet the Aas specified by the user^o limitation of Claim 1.

However, the Court concludes that use of eBC's On-Demand feature does meet the Aas specified by the user^o limitation. On-Demand allows a customer to submit a request to receive billing information for a particular previous billing cycle. Dkt. No. 881 at 7 & 22. In doing this, the customer Aselects . . . the character of^o the information being provided, specifying that the information cover only a particular time period. Qwest argues that because the time period selected is limited by billing cycleCin other words, a customer cannot request just any time period, but instead the time period requested must correspond to a billing cycleCthe Aas specified by the user^o limitation is not met. However, Aas specified by the user^o does not require as much flexibility as Qwest would

like, and it is sufficient that the customer may select a subset of available time ranges, even if that selection must correspond to a particular billing cycle.

Having determined that use of the On-Demand feature meets the Aas specified by the user@ limitation, the Court still must determine what evidence is necessary to show this element. Qwest contends that Centillion must bring forth evidence of specific customers that specified the character of the data and reports they were receiving, above and beyond evidence that the On-Demand feature provides the capacity to allow customers to make those selections. Centillion contends that the Court-s claim construction of Adata processing means@ in conjunction with Aas specified by the user@ renders the limitation one of capability, not actual operability.

Examining the language of the claims, the Court concludes that mere capacity is insufficient. The fifth element of Claim 1 speaks of a Adata processing means generating . . . reports as specified by the user,@ language that speaks of the data processing means taking some sort of action to bring the reports into existence. However, Qwest-s contention that Centillion must bring forth evidence such as customer deposition testimony of use of the On-Demand feature asks too much, as Centillion may prove that the feature was used through circumstantial evidence. *Vita-Mix Corp.*, 581 F.3d at 1326. Reviewing the evidence, the Court concludes a genuine dispute of material fact exists as to whether at least one of Qwest-s customers used the On Demand feature. For instance, Nick Bates of MedQuist, Inc. sent a complaint to Qwest-s help desk stating, Al am trying to download On-Demand files, I receive the emails that state that they are completed, but they do not appear on the website for me. A co-worker of mine has no problem with this feature.@ Dkt. No. 886-9 at 3. Contrary to Qwest-s argument, this is

more than the descriptions in the user's manual found insufficient by the Federal Circuit in *Mirror Worlds*. See *Mirror Worlds, LLC v. Apple, Inc.*, No. 2011-1392, 2012 WL 3800812, at *8B*9 (Fed. Cir. Sept. 4, 2012). The Court concludes that use of eBC's On-Demand feature meets the Aas specified by the user@ limitation of Claim 1 and that there is a factual dispute as to whether Qwest's customers actively used the feature.

b. Means-plus-function construal of Adata processing means@

Qwest contends that eBC does not have a Adata processing means@ as that term was construed in the *Markman* Order.³ Centillion contends that eBC Back Office, LATIS, or a combination thereof is a Adata processing means@ as defined by the Court. The Court construed Adata processing means@ as a means-plus-function term under 35 U.S.C. ' 112, & 6. Specifically, the Court concluded that a data processing means performs the functions of (1) generating preprocessed summary reports and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means. Dkt. No. 394 at 31. The structure corresponding to these functions was construed as Aa computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data into a PC-compatible format and its equivalents.@ *Id.* As noted above, infringement of a means-plus-function term Arequires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the

³ The Court has concluded that the Logic product does not contain the "as specified by the user" limitation of Claim 1, therefore, it will not address the other limitations of that claim with respect to the Logic product.

corresponding structure in the specification.⁶ *Applied Med. Res. Corp.*, 448 F.3d at 1333. Equivalence in structure may be proven by showing that [] two [structures] perform the identical function in substantially the same way, with substantially the same result.⁷ *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1364 (Fed. Cir. 2000).

Examining the required functions of the data processing means, the Court concludes that the eBC Back Office and LATIS, or a combination thereof, generates preprocessed summary reports as required by the claims. In the *Markman* Order, the Court defined a summary report⁸ as a collection of analyzed and/or reorganized data.⁹ Dkt. No. 394 at 41. The Court left open the possibility that a report including all billing information for a particular customer would constitute a summary report and did not place any limitation on the format of the summary report. *Id.* The eBC Back Office organizes the billing information by customer and inserts that information into various .TXT files, although viewing of these .TXT files requires additional .FMT files constructed by Qwest personnel outside of the eBC framework. Dkt. No. 892 at 4 & 6. These .TXT files, even apart from the .FMT files, are sufficient to constitute summary reports as that term has been construed, as they include a collection of . . . reorganized data.¹⁰ Centillion has brought forth evidence that at least some of Qwest's customers receive their billing information and use it in eBCC in other words, at least some of Qwest's customers receive the .TXT files, preprocessed summary reports. See, e.g., Dkt. No. 872 at 18 & 27. Therefore, the Court concludes that eBC Back Office generates a preprocessed summary report.

Turning to the other required function of the data processing means, however, the Court concludes that eBC Back Office, LATIS, or a combination thereof, does not

Aorganiz[e] said summary reports into a format for storage manipulation and display on a personal computer data processing means.⁶ See Dkt. No. 394 at 31. Although LATIS and eBC Back Office perform the steps necessary to create a summary reportCthe relevant .TXT fileCneither of those systems organize the summary reports into a format for display on a personal computer. Instead, the customer must be provided with a .FMT file and schema within the eBC client application to interact with the .TXT file and allow display of the summary reports on a personal computer. Dkt. No. 892 at 4 & 6. The .FMT file is generated by Qwest personnel apart from either LATIS or eBC Back Office. *Id.* Neither LATIS nor eBC Back OfficeCthe alleged data processing meansCperforms the steps necessary to format the .TXT file for display. Because Centillion has not brought forth evidence that the so-called data processing means Aorganiz[e] . . . summary reports into a format for . . . display,⁶ the Court concludes that eBC fails to perform a required function of the data processing means and, therefore, fails to meet all limitations of Claim 1.

As noted above, direct infringement requires that every limitation of the claim asserted to be infringed has been found in the accused device, either literally or by equivalent. *Cross Med. Prods.*, 424 F.3d at 1310. For means-plus-function limitations, the relevant structure must Aperform the identical function recited in the claim.⁶ *Applied Med. Res. Corp.*, 448 F.3d at 1333. Because the Court concludes that the data processing means of eBC does not perform all required functions set forth in the limitations of Claim 1, the Court concludes that eBC does not infringe Claim 1 of the 270 Patent.

2. CLAIM 8

Claim 8 tracks Claim 1 specifying operation by Atelecommunications service providers[®] and involving Atelecommunication usage records.[®] See generally [›]270 Patent col.32 ll. 30B46. As the parties do not dispute that Qwest is a Atelecommunications service provider[®] and any records distributed by Qwest are Atelecommunication usage records,[®] the direct infringement analysis for Claim 8 is identical to the analysis for Claim 1. See *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1371 (Fed. Cir. 2003) (requiring identical construction of identical claim terms). Because, as discussed above, neither Logic nor eBC infringe all the limitations of Claim 1, and the relevant limitations of Claim 8 contain identical claim terms, the Court concludes that Logic and eBC do not infringe Claim 8 of the [›]270 Patent.⁴

B. INDIRECT INFRINGEMENT

In order for Qwest to be held liable for indirect infringementCeither contributory infringement or inducement of infringementCan underlying act of direct infringement, in this case committed by Qwest-s customers, must be shown. *Akamai Techs.*, Nos. 2009-1372, 1380, 1416B17, 2012 WL 3764695, at *4 (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341 (1961); *Henry v. A.B. Dick Co.*, 224 U.S. 1, 12 (1912)); see also *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1364 (Fed. Cir. 2012). As discussed

⁴ As Claims 10 and 46 of the [›]270 Patent are dependent claims based on Claim 8, the Court concludes that Logic and eBC do not infringe those Claims either. Likewise, having concluded that neither Logic nor eBC infringe any of the asserted claims, the Court also concludes that, as a functional equivalent of either of those products, Insite also does not infringe the asserted claims.

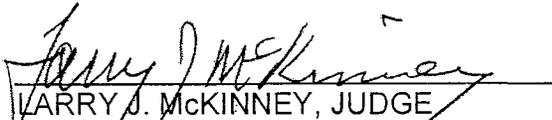
above, the Accused Products fail to satisfy all claim limitations of the '270 Patent and, therefore, no direct infringement has occurred. Consequently, Qwest cannot be held liable for indirect infringement⁵ and is entitled to summary judgment.

IV. CONCLUSION

For the reasons set forth herein, the Court rules as follows:

- 1) Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings) Inc.-s Motion for Partial Summary Judgment of Infringement [Dkt. No. 871] is **DENIED**.
- 2) Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation-s Motion for Summary Judgment of Non-Infringement [Dkt. No. 880] is **GRANTED**.
- 3) Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings), Inc.-s Request for Oral Argument on Their Motion for Partial Summary Judgment of Infringement [Dkt. No. 879] is **DENIED**.
- 4) Qwest's Motion for Leave to File a Sur-Reply to Centillion's Reply in Support of Its Notice of Supplemental Authority [Dkt. No. 918] is **DENIED**.
- 5) Centillion-s Renewed Motion for Oral Argument on Motions for Summary Judgment [Dkt. No. 921] is **DENIED**.

IT IS SO ORDERED this 15th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distribution attached.

⁵ Because Centillion has not shown that direct infringement has occurred, the Court declines to address whether Qwest had the requisite *mens rea* to indirectly infringe the '270 Patent.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
Plaintiff)

vs.)

1:04-cv-0073-LJM-DKL

QWEST COMMUNICATIONS)
INTERNATIONAL, INC. and QWEST)
CORPORATION,)
Defendants.)

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,)
Consolidated Plaintiffs,)

vs.)

1:04-cv-2076
(consolidated with above)

CENTILLION DATA SYSTEMS, LLC)
and CTI GROUP (HOLDINGS), INC.,)
Consolidated Defendants.)

ENTRY OF JUDGMENT

Through an Order dated October 15, 2012, the Court granted summary judgment in favor of Defendants, Qwest Communications International, Inc. and Qwest Corporation, and against Plaintiff, Centillion Data Systems, LLC, on Plaintiff's claims that Defendants infringed United States Patent No. 5,287,270. Plaintiff shall take nothing by way of its Complaint. All claims having been resolved on the merits, Judgment is entered accordingly. Each party shall bear its own costs.

IT IS SO ORDERED this 15th day of October, 2012.

Distribution attached.


HARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-CV-00073-LJM-DKL
)	
Plaintiff,)	
)	
v.)	
)	
CONVERGYS CORPORATION, QWEST)	
COMMUNICATIONS INTERNATIONAL,)	
INC., and QWEST CORPORATION,)	
)	
Defendants.)	
<hr/>		
QWEST CORPORATION and QWEST	)	Case No. 1:04-cv-2076
COMMUNICATIONS CORPORATION,	)	[consolidated with above]
)	
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC and CTI)	
GROUP (HOLDINGS), INC.,)	
)	
Consolidated Defendants.)	

MOTION TO RECONSIDER ENTRY OF JUDGMENT DATED OCTOBER 15, 2012

Come now Defendants, Qwest Corporation and Qwest Communications International Inc., and Consolidated Plaintiff, Qwest Communications Corporation, ("Qwest"), by counsel, and pursuant to Fed. R. Civ. Proc. 59 (e), respectfully move the Court to reconsider its Entry of Judgment, dated October 15, 2012 and in support thereof, show the Court that the Entry of Judgment provides in part that "Each party shall bear its own costs." Qwest prevailed in this action and respectfully requests that it be awarded its costs, pursuant to the Bill of Costs that it filed on November 17, 2009, Doc. No. 830. Qwest has not incurred and will therefore not seek any additional costs other than those in its previously filed Bill of Costs.

WHEREFORE, Defendants, Qwest Corporation and Qwest Communications International Inc., and Consolidated Plaintiff, Qwest Communications Corporation, by counsel, pray that the Court reconsider its Entry of Judgment, dated October 15, 2012, and for all other relief proper in the premises.

Dated: October 23, 2012

RILEY BENNETT & EGLOFF, LLP

s/ James W. Riley, Jr.

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*Attorney for Defendants, Qwest Corporation and
Qwest Communications International Inc., and
Consolidated Plaintiff, Qwest Communications
Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2012, a copy of the foregoing *Motion to Reconsider Entry of Judgment Dated October 15, 2012*, was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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s/ James W. Riley, Jr.
James W. Riley, Jr.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
Plaintiff)
)
vs.)
) 1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)
INTERNATIONAL, INC. and QWEST)
CORPORATION,)
Defendants.)

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,)
Consolidated Plaintiffs,)
) 1:04-cv-2076
vs.) (consolidated with above)
)
CENTILLION DATA SYSTEMS, LLC)
and CTI GROUP (HOLDINGS), INC.,)
Consolidated Defendants.)

ORDER

Defendants Qwest Corporation and Qwest Communications International, Inc. and Consolidated Plaintiff, Qwest Communications Corporation (collectively "Qwest") have moved for an amendment of the Entry of Judgment entered in this cause on October 15, 2012, to add language to reserve to Qwest its invalidity defenses in case this cause returns to this Court for further consideration. The Court sees no just reason to deny this motion.

Further, Qwest also requests that the Court reconsider its Order denying Qwest its costs as set forth in its Bill of Costs filed November 17, 2009, Dkt. No. 830. See Dkt. No. 932. The Court concludes that it misapprehended the discretion allowed by Rule 54(d)(1) of the Federal Rules of Civil Procedure ("Rule 54(d)(1)") as set forth in Seventh

Circuit precedent concluding that it is incumbent upon the unsuccessful party to show that the prevailing party should be penalized by a denial of costs. See e.g. *Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co.*, 854 F.2d 219, 221-22 (7th Cir. 1988) (concluding that the district court's discretion in awarding costs is narrowly confined by misconduct of the prevailing party or an inability of the losing party to pay) (citing, *inter alia Popeil Bros., Inc. v. Schick Elec., Inc.*, 516 F.2d 772, 774-75 (7th Cir. 1975)). No such showing has been made by Plaintiff Centillion Data Systems, LLC.

Qwest's Motion to Amend Entry of Judgment dated October 15, 2012 (Dkt. No. 931), is **GRANTED**. In addition, Qwest's Motion to Reconsider (Dkt. No. 932) is also **GRANTED**. An amended Judgment shall be entered accordingly.

IT IS SO ORDERED this 30th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distributed to all attorneys of record via CM/ECF.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff)	
)	
vs.)	
	)	1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	

QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
	)	1:04-cv-2076
vs.	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC)	
and CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

AMENDED ENTRY OF JUDGMENT

Through an Order dated October 15, 2012, the Court granted summary judgment in favor of Defendants, Qwest Communications International, Inc. and Qwest Corporation ("Qwest"), and against Plaintiff, Centillion Data Systems, LLC, on Plaintiff's claims that Defendants infringed United States Patent No. 5,287,270. Plaintiff shall take nothing by way of its Complaint.

Additionally, Defendants Qwest assert several affirmative defenses, including defenses of invalidity, affirmative defenses directed at unenforceability and a claim for invalidity raised in a declaratory judgment action directed at United States Patent No. 5,287,270. To promote judicial economy, the Court dismisses all of Defendants Qwest's affirmative defenses and its declaratory judgment claim for invalidity without

prejudice to Defendants Qwest's rights to re-raise the affirmative defenses and declaratory judgment claim in the future in this action to the extent that the affirmative defenses and declaratory judgment claim could have been asserted on or before October 15, 2012, if this action is remanded for further consideration.

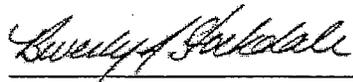
Defendant Qwest is hereby awarded its costs in the amount of \$251,245.95 as set forth at Docket No. 830.

IT IS SO ORDERED this 30th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Date: 10/30/12

Laura Briggs, Clerk
United States District Court


By: Deputy Clerk

Distribution to all counsel of record via CM/ECF.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-CV-00073-LJM-DKL
)	
Plaintiff,)	
)	
v.)	
)	
CONVERGYS CORPORATION, QWEST COMMUNICATIONS INTERNATIONAL INC., and QWEST CORPORATION,)	
)	
Defendants.)	
<hr style="border: 0.5px solid black;"/>		
QWEST CORPORATION AND QWEST COMMUNICATIONS CORPORATION,	)	Case No. 1:04-CV-2076
	)	[Consolidated with above]
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC, and CTI GROUP (HOLDINGS), INC.,)	
)	
Consolidated Defendants.)	
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**CENTILLION’S MOTION TO RECONSIDER THE COURT’S ORDER GRANTING
QWEST’S MOTION TO AMEND THE JUDGMENT AND TO AMEND THE
JUDGMENT ENTERED ON OCTOBER 30, 2012**

Plaintiff, Centillion Data Systems, LLC (“Centillion”), by counsel, hereby moves the Court for an Order Reconsidering the Order entered October 30, 2012 (ECF No. 933), which granted Qwest’s Motion to Reconsider Entry of Judgment (ECF No. 932) and which included an award of costs, and to amend the Amended Entry of Judgment filed October 30, 2012

(ECF No. 934).¹ Centillion makes this motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure and S.D. Ind. L.R. 7.1(c)(2)(A), on the grounds that the grant of Qwest's motion and the award of costs occurred before Centillion had the opportunity to file an opposition to the motion and without following any of the procedures relating to bills of costs prescribed by Rule 54(d)(1).

Centillion bases this motion on its memorandum of points and authorities, served and filed herewith, and on all of the pleadings, records, and files in the above-captioned proceeding.

WHEREFORE, Centillion respectfully requests that the Court grant its motion for reconsideration, reconsider its prior Order, and further amend the judgment to delete the award of costs to Qwest.

DATED: November 5, 2012

Respectfully submitted,

/s/ Phillip J. Fowler

David C. Campbell

Phillip J. Fowler

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¹ Centillion does not challenge the court's granting of Qwest's motion to preserve its affirmative defenses following any remand, ECF No. 931, and does not seek reconsideration of that portion of the court's order and judgment.

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Phone: (212) 885-5000

*Attorneys for Plaintiffs/Counterclaim Defendants
Centillion Data Systems, LLC and CTI Group
(Holdings), Inc.*

CERTIFICATE OF SERVICE

I certify that on November 5, 2012, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system:

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Indianapolis, IN 46204

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s/ Phillip J. Fowler

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-CV-00073-LJM-DKL
)	
Plaintiff,)	
)	
v.)	
)	
CONVERGYS CORPORATION, QWEST)	
COMMUNICATIONS INTERNATIONAL)	
INC., and QWEST CORPORATION,)	
)	
Defendants.)	
_____)	
)	
QWEST CORPORATION AND QWEST	)	Case No. 1:04-CV-2076
COMMUNICATIONS CORPORATION,	)	[Consolidated with above]
)	
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC, and CTI)	
GROUP (HOLDINGS), INC.,)	
)	
Consolidated Defendants.)	
_____)	

ORDER

This matter came before the Court on the motion of the Plaintiff, Centillion Data Systems, LLC, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure and Local Civil Rule 7.1(c)(2)(A), for an Order Reconsidering the Order entered October 30, 2012 (ECF No. 933), which granted Qwest’s Motion to Reconsider Entry of Judgment (ECF No. 932) and which included an award of costs, and to amend the Amended Entry of Judgment filed October 30, 2012 (ECF No. 934).

The Court having duly considered the matter, and good cause appearing therefore, it is hereby

ORDERED that Plaintiffs' motion for reconsideration is **GRANTED** on all of the grounds set forth in support thereof; and it is

FURTHER ORDERED that the Court will amend the Amended Entry of Judgment to delete the award of costs to Qwest; and it is

FURTHER ORDERED that the Clerk shall consider Qwest's Bill of Costs pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure.

SO ORDERED.

_____, 2012

Larry J. McKinney
Senior United States District Judge

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each party to bear its own costs. ECF No. 932. On November 17, 2009, Qwest had filed a Bill of Costs seeking \$251,245.95. ECF No. 830. In its recent Motion to Reconsider Entry of Judgment (ECF No. 932), Qwest requested that the Court award it the costs claimed in its 2009 Bill of Costs. It made this request, even though the clerk has never taxed costs in this case. Because the clerk never acted, Centillion never filed objections to Qwest's bill of costs or otherwise sought a review of costs taxed pursuant to Rule 54(d)(1). The Court granted Qwest's motion to reconsider and entered its order and an Amended Entry of Judgment on October 30, 2012, when Centillion was preparing an opposition that would not have been due until November 9, 2012. *See* Local Civil Rule 7.1(c)(2)(A).

Accordingly, Centillion requests that the Court reconsider and modify its Order granting Qwest's motion for an award of costs, and further amend the judgment to reflect this modification.¹

DISCUSSION

The Court's ruling on Qwest's motion for reconsideration was premature and deprived Centillion of the opportunity to respond, which would justify relief under Rule 59(e) of the Federal Rules of Civil Procedure. Rule 59(e) allows the movant to bring to the district court's attention a manifest error of law or fact, or newly discovered evidence. *LB Credit Corp. v. RTC*, 49 F.3d 1263, 1267 (7th Cir. 1997). This rule "enables the court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." *Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F.3d 746, 749 (7th Cir. 1995). A motion to reconsider is appropriate when a court "has patently misunderstood a party, or has made a

¹ Centillion does not object to the amended judgment to the extent it dismissed Qwest's affirmative defenses without prejudice.

decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.” *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990) (citation omitted).

The Court’s granting of Qwest’s motion for reconsideration to allow an award of costs before the Clerk has acted constitutes an error of apprehension. In the normal course, under Rule 54(d)(1) of the Federal Rules of Civil Procedure, costs are taxed in the first instance by the clerk. See 10 Charles Alan Wright, *et al.*, *Fed. Prac. & Proc.* § 2679, at 485-86 (3d ed. 1998). Once the clerk taxes costs, the non-prevailing party has seven days from the clerk’s action in which to object. Fed. R. Civ. P. 54(d)(1). The district court’s role is primarily to review the clerk’s action. “[N]othing normally can come before the court until the clerk has acted and an objection has been made.” 10 *Fed. Prac. & Proc.* § 2679, at 488.

In amending its order and judgment in this case, however, the Court acted before the clerk had taxed costs. Although Centillion could have filed its objections before the clerk had acted, such action would have been premature. See *Halasa v. ITT Educ. Servs., Inc.*, No. 1:10-cv-437-WTL-MJD, 2012 U.S. Dist. LEXIS 24664, at *1 n.1 (S.D. Ind. Feb. 27, 2012). In fact, the clerk has never taxed costs in this case, and appears not to have done so because Centillion filed a timely notice of appeal on November 30, 2009 (ECF No. 831). Once the Federal Circuit reversed this court’s earlier grant of summary judgment, Qwest was no longer entitled to its costs. When the Court entered its Amended Order and entered Judgment on October 15, 2012, Qwest was still not entitled to its costs because the Court’s order provided that each side was to bear its own costs.

Moreover, the Court’s grant of Qwest’s motion for reconsideration to amend the judgment was premature. Qwest filed its motion for reconsideration on October 23, 2012.

ECF No. 932. Under this Court's local rules, Centillion had until November 9, 2012 to file its opposition. Instead, the Court granted Qwest's motion on October 30, one week after it was filed. As Qwest cited neither rule nor case law justifying an amendment of the judgment, and Centillion intended to oppose the motion, the Court's action without prior notice deprived Centillion of its opportunity to respond.

Finally, Qwest's enormous bill of costs is objectionable and Centillion should be afforded the normal procedures to object. Qwest "carries the burden of showing that the requested costs were necessarily incurred and reasonable." *Trustees of Chicago Plastering Inst. Pension Trust v. Cork Plastering Co.*, 570 F.3d 890, 906 (7th Cir. 2009). The party seeking costs must show that the costs claimed are allowable under 28 U.S.C. § 1920, and that they are reasonable as to amount. *Majeske v. City of Chicago*, 218 F.3d 816, 824 (7th Cir. 2000). As a whole, Qwest sought and the Court included in the judgment costs of \$251,245.81. This is a substantial sum by any measure, and at least 10 times greater than the bills of costs considered in the vast majority of cases from the Seventh Circuit and the Southern District of Indiana to consider this question. As the clerk has never acted on Qwest's bill of costs, Centillion never had the opportunity to object to specific items of cost.

Although Centillion respectfully requests the opportunity to file detail objections, Qwest's bill of costs is objectionable on its face. First, it lacks proper documentation. Although Form AO-133 specifically requires those submitting bills of cost to "[a]ttach to your bill an itemization and documentation for requested costs in all categories," Qwest has merely submitted an index of costs incurred from 2004 through 2009. Qwest has provided no invoices to substantiate its costs or declaration of counsel explaining its costs.

With respect to its claim of almost \$74,000 for transcripts, Qwest is only entitled to “[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case.” 28 U.S.C. § 1920(2). “The Seventh Circuit has interpreted ‘for use in the case’ to mean ‘actually prepared for use in presenting evidence to the court’” *J&W Fence Supply Co., Inc. v. United States*, No. IP 97-0128-C-Y/S, 1999 U.S. Dist. LEXIS 15296, at *2 (S.D. Ind. Sept. 3, 1999) (quoting *EEOC v. Kenosha Unified School Dist. No. 1*, 620 F.2d 1220, 1227-28 (7th Cir. 1980)). A cursory review of the list of depositions reveals that many of the transcripts were not essential to the Court’s rulings. The Court’s ruling in October 2009, essentially the cut-off date for Qwest’s costs, relied on an issue of law (whether the so-called “all elements” rule required one entity to “practice” all the elements of a system claim in order for direct infringement to exist). The vast majority of the transcripts for which Qwest claims its expenses had nothing to do with this discrete issue of law. Although Qwest’s opposition to Centillion’s motion for partial summary judgment of infringement required citation to additional deposition transcripts, it did not implicate every single witness contained on Qwest’s list of depositions. As for the witnesses relating solely to the cross-motions directed to the invalidity of the ‘270 patent – Messrs. Coyle, Graves, Varley, and Whitman – Qwest was not the prevailing party in the district court on that issue.

Qwest also has claimed \$177,117.13 for “photocopying, imaging, and printing costs.” The listing submitted with Qwest’s bill of costs gives no indication of the purpose of any of the photocopying, whether it was directed to “presenting evidence to the court,” or whether all of the copies were necessary to litigate Qwest’s case. Moreover, Qwest’s bill of costs contains no indication of the number of copies made, the rates charged for any of this work, whether the costs include database fees, or whether multiple sets of copies were made. *See Kulumani v. Blue*

Cross Blue Shield Ass'n, 224 F.3d 681, 685 (7th Cir. 2000) (remanding for consideration of whether claimed expenses for copying multiple sets of documents claimed were necessarily obtained for use in the case). Without this information, Centillion cannot determine whether any or all of these items are proper and whether the amounts being charged are reasonable.

If Qwest remains the prevailing party after all appeals are exhausted, the Court has the discretion to award it costs that are allowable under § 1920 and reasonable in amount. But the Court's expedited decision to grant Qwest's motion for reconsideration on and enter an amended judgment to include costs in the amount of over \$250,000, before the clerk had taxed costs and Centillion had an opportunity to raise specific objections, is procedurally improper and punitive. The Court should reconsider its order amending the judgment and allow Centillion the procedural protections afforded under Rule 54(d)(1).

CONCLUSION

For the foregoing reasons, Centillion respectfully requests that the Court grant its Motion for Reconsideration, reconsider its prior Order, and amend the judgment to delete the award of costs to Qwest.

DATED: November 5, 2012

Respectfully submitted,

/s/ Phillip J. Fowler

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Phillip J. Fowler

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,

Plaintiff,

v.

QWEST COMMUNICATIONS
INTERNATIONAL, INC., and QWEST
CORPORATION,

Defendants.

Case No. 1:04-cv-0073-LJM-DKL

QWEST CORPORATION; QWEST
COMMUNICATIONS CORPORATION

Consolidated Plaintiffs,

v.

CENTILLION DATA SYSTEMS, LLC

Consolidated Defendant.

Case No. 1:04-cv-2076
[Consolidated with above]

NOTICE OF APPEAL

Notice is hereby given that the Plaintiff, Centillion Data Systems, LLC, hereby appeals to the United States Court of Appeals for the Federal Circuit from the:

1. Amended Entry of Judgment entered in this action on October 30, 2012, ECF No. 934 (Exhibit A hereto), and from all related prior decisions and orders, including
2. The Court's Order that, *inter alia*, denied Plaintiffs' Motion for Partial Summary Judgment of Infringement (ECF No. 871) and granted the Qwest Defendants' Motion

for Summary Judgment of Non-Infringement (ECF No. 880), entered in this action on October 15, 2012, ECF No. 929 (Exhibit B hereto), and the Order granting the Qwest Defendants' Motion to Reconsider Entry of Judgment Dated October 15, 2012 (ECF No. 932), entered in this action on October 30, 2012, ECF No. 933 (Exhibit C hereto).

DATED: November 13, 2012

Respectfully submitted,

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Attorneys for Plaintiff Centillion Data Systems, LLC

CERTIFICATE OF SERVICE

I certify that on November 13, 2012, a copy of the foregoing document was filed via the Court's electronic filing system and served by first-class mail, postage prepaid, on the following:

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/s/ Phillip J. Fowler _____

1727359

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff)	
)	
vs.)	
	)	1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	

QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
	)	1:04-cv-2076
vs.	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC)	
and CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

AMENDED ENTRY OF JUDGMENT

Through an Order dated October 15, 2012, the Court granted summary judgment in favor of Defendants, Qwest Communications International, Inc. and Qwest Corporation ("Qwest"), and against Plaintiff, Centillion Data Systems, LLC, on Plaintiff's claims that Defendants infringed United States Patent No. 5,287,270. Plaintiff shall take nothing by way of its Complaint.

Additionally, Defendants Qwest assert several affirmative defenses, including defenses of invalidity, affirmative defenses directed at unenforceability and a claim for invalidity raised in a declaratory judgment action directed at United States Patent No. 5,287,270. To promote judicial economy, the Court dismisses all of Defendants Qwest's affirmative defenses and its declaratory judgment claim for invalidity without

prejudice to Defendants Qwest's rights to re-raise the affirmative defenses and declaratory judgment claim in the future in this action to the extent that the affirmative defenses and declaratory judgment claim could have been asserted on or before October 15, 2012, if this action is remanded for further consideration.

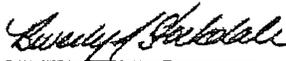
Defendant Qwest is hereby awarded its costs in the amount of \$251,245.95 as set forth at Docket No. 830.

IT IS SO ORDERED this 30th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Date: 10/30/12

Laura Briggs, Clerk
United States District Court


By: Deputy Clerk

Distribution to all counsel of record via CM/ECF.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff)	
)	
vs.)	
	)	1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	

QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
	)	1:04-cv-2076
vs.	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC)	
and CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

ORDER

Pending before the Court are two motions for summary judgment (AMotions®): Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings) Inc.-s (collectively, ACentillion®) Motion for Partial Summary Judgment of Infringement [Dkt. No. 871],¹ and Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation's

¹ Contemporaneously with the Motions, Centillion filed Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings), Inc.-s Request for Oral Argument on Their Motion for Partial Summary Judgment of Infringement [Dkt. No. 879]. Subsequently, the request was renewed in Centillion-s Renewed Motion for Oral Argument on Motions for Summary Judgment [Dkt. No. 921]. The Court has sufficient information to decide the Motions without oral argument and, therefore, DENIES Centillion-s requests for oral argument [dkt. nos. 879, 921].

In addition, following the submission of supplemental authority and briefing on the same, Qwest filed its Motion for Leave to File a Sur-Reply to Centillion-s Reply in Support of Its Notice of Supplemental Authority [Dkt. No. 918]. The Court concludes that a surreply is unnecessary given the extensive briefing already file and DENIES Qwest-s motion [dkt. no. 918].

collectively, AQwest® Motion for Summary Judgment of Non-Infringement [Dkt. No. 880].

The Court has considered the parties' arguments and evidence and rules as follows.

I. BACKGROUND

On February 15, 1994, the United States Patent and Trademark Office issued United States Patent No. 5,287,270 (the '270 Patent), titled Billing System, to Compucom Communications Corporation. '270 Patent. Broadly speaking, the '270 Patent allows telephone service providers to provide subscribers with detailed call information that can be easily organized and analyzed. *Id.* Following a corporate reorganization, the '270 Patent was transferred to its current owner, Centillion Data Systems, LLC. Dkt. No. 872 at 4 & 2.

A. RELEVANT CLAIMS OF THE '270 PATENT

Centillion accuses Qwest of infringing claims 1, 8, 10, and 46 of the '270 Patent.

Dkt. No. 884 at 7 & 2. Those claims recite:

1. A system for presenting information concerning the actual cost of a service provided to a user by a service provider, said system comprising:

storage means for storing individual transactions records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction from said storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said individual transaction records including said summary reports from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said individual transaction records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said selected records including said exact charges actually billed to said user.

* * *

8. A system for presenting, under control of a user, usage and actual cost information relating to telecommunications service provided to said user by a telecommunications service provider, said system comprising:

telecommunications service provider storage means for storing records prepared by a telecommunications service provider relating to telecommunications usage for one or more telecommunications subscribers including said user, and the exact charges actually billed to said user by said service provider for said usage;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of the records from said service provider storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said telecommunications usage records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said telecommunications usage records including said summary reports from said data processing means to said personal computer data processing means;

said personal computer data processing means being adapted to perform additional processing on said telecommunications records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said telecommunications usage records including said exact charges actually billed to said user.

10. A system as in claim 8 wherein said selected records relating to telecommunications usage and cost comprise at least one telecommunications call detail record corresponding to a unique telecommunications call to be billed to said subscriber, said call having a length determined by said telecommunications carrier.

46. A system as in claim 8 wherein an information interchange media means in the form of a data communications line is employed for transferring said selected records from said data processing means to said personal computer data processing means.

>270 Patent col.31 l. 39Bcol.36 l. 7.

B. QWEST-S PRODUCTS

Centillion contends that Qwest infringed the >270 Patent through its Logic, eBill Companion, and Insite products (collectively, Accused Products®). Centillion moves for summary judgment only as to the eBill Companion (eBC®) application. Dkt. No. 872 at 12n.5. However, Qwest has moved for summary judgment of non-infringement as to all of the Accused Products. Dkt. No. 884 at 9.

The parties agree that Qwest was aware of the >270 Patent prior to the design and introduction of both Logic and eBC. Dkt. No. 883-6 at 7B8; Dkt No. 881 at ¶ 5. Qwest contends that it attempted to design around the >270 Patent and, as a result, the Accused Products were less robust than desired.® Dkt. No. 884 at 16 & 20. While designing the

Accused Products, Qwest's designers purportedly did not seek legal advice as to whether their design effectively designed around the '270 Patent, instead relying on internal discussions among designers. Dkt. No. 886-5 at 4.

Logic is the predecessor system to eBC and was introduced in 1997; it was discontinued in 2002 except for use by specific customers. Dkt. No. 881 at 2 ¶ 4; Dkt No. 883-6 at 9. Qwest introduced eBC in 2002. Dkt. No. 872-1 at 11. Insite is a product offered to BellSouth customers, and Centillion contends that Insite is functionally identical to both Logic and eBC, see Dkt. No. 828 at 8; see also *Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1281 (Fed. Cir. 2011), therefore, addressing infringement of the Logic and eBC products in detail will resolve the infringement issue with respect to Insite. All of the Accused Products are available to commercial customers. Dkt. No. 883-9 at 5.

There are two parts to either the Logic or the eBC product: a back-end system and the Qwest client application software. Dkt. No. 881 at 2 ¶ 3. See also *Centillion Data Sys.*, 631 F.3d at 1281. The back-end systems collect electronic monthly billing information. Dkt. No. 881 at 2 ¶ 3. Qwest sends the billing information either by CD-ROM or by download to individual customers for their use. *Id.* Qwest customers may choose to install Qwest client application software, such as Logic or eBC, on a personal computer, which allows for additional functionality, but the Qwest software is not necessary to utilize the monthly billing information. Dkt. No. 872-10 at 33. See also *Centillion*, 631 F.3d at 1281. The billing information consists of call detail records (ACDRs®) for each discrete call captured by Qwest's telecom switches. Dkt. No. 872 at 13 & 10; Dkt. No. 881 at 2 ¶ 3. The Accused Products permit display and billing analysis

of long-distance telecommunications usage for particular customers. Dkt. No. 872-10 at 12; Dkt. No. 881 at 2 ¶ 3.

To prepare the billing information sent to customers, the CDRs captured through Qwest's telecom switches are processed in the LATIS systemCa software application that runs on various serversCwhere each CDR is rated to include the exact charges actually billed for a given call. Dkt. No. 872 at 13B14 && 11, 13. This rating process includes application of various promotional pricing and discounts. *Id.* The rated CDRs are stored in several locations in Qwest's architecture, including the Billing Data Server (ABDS®), which is a hard disk device capable of receiving, retaining, and supplying data. *Id.* at 14 & 12. In eBC, from the BDS, CDRs are transferred via data communication lines to eBC Back Office, a software application written in Java and XML, upon request. *Id.* at 14 && 13B14.

Qwest customers may register to use a feature called project account codes or "PACs" in both the Logic and eBC products. PACs allow a customer to insert codes corresponding to particular employees, types of calls, or offices. *Id.* at 7 & 20. A customer using this feature enters the relevant PAC in addition to dialing the relevant telephone number; the PAC data becomes part of the CDR for that call. *Id.* at 6 & 19. In the files created by eBC or Logic, PACs are included for calls on which they are used. *Id.* For calls made without using PACs, the data file includes a null value in the PAC field. *Id.*

In the eBC product, eBC Back Office uses the CDR information to create .TXT files. Dkt. No. 892 at 4 & 6. The .TXT files include a collection of all billing records for a given customer. Information on the .TXT files mirrors that contained in the individual

CDRs. Dkt. No. 881 at 6 & 19. For delivery to customers, the .TXT files are combined with .FMT files, which are manually created by Qwest personnel. Dkt. No. 892 at 4 & 6. The .FMT files, along with aspects of the eBC customer portal, provide the schema for organizing the .TXT files. Dkt. No. 873-4 at 4. All customers receiving billing data through eBC receive the same .FMT files. *Id.* In order to use the billing data in the eBC client application software, a customer must receive both the relevant .TXT and .FMT files. *Id.*

The billing information, sent to the requesting customer as a .zip file, includes the relevant .TXT and .FMT files configured for use in the eBC client application. See *generally* Dkt. No. 873-8. Qwest does not require that customers receiving this billing information use the eBC client application, and the files may be used in third party applications. Dkt. No. 884 at 13 & 8. Requesting customers receive their billing information at the end of each billing cycle. Dkt. No. 872-10 at 12.

The On-Demand feature was developed by Qwest in 2002. Dkt. No. 881 at 7 ¶ 22. It is not available for users of the Logic product. *Id.* Using the On-Demand feature of the eBC product customers can request billing information for a particular previous time period. Dkt. No. 881 at 8 & 23. Further, Qwest has provided customization of the data provided to some eBC customers, which generally is comprised of additional fields. *Id.* at 8 ¶ 26.

C. PROCEDURAL HISTORY

On January 12, 2004, Centillion brought suit against Qwest in this Court. Dkt. No. 1. On February 14, 2005, the suit was consolidated with a related suit by Qwest against

Centillion, originally filed in the United States District Court for the Western District of Washington and transferred to this Court, seeking a declaratory judgment of non-infringement or invalidity of the '270 Patent. See Dkt. No. 174.

On January 9, 2008, following briefing and argument, the Court issued its Order on Claim Construction (*Markman* Order®). The Court construed the disputed claim terms as follows:

CLAIM TERM	CONSTRUCTION
Aactual cost®	not a claim limitation
Aexact charges actually billed®	the rated cost assigned to each individual transaction record
Ameans for storing®	a device capable of receiving, retaining, and supplying data
Adata processing means®	functions: (1) generating preprocessed summary reports; and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means structure: a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data, and its equivalents
Aas specified by the user®	the service customer selects, or makes specific, the character of
Ameans for transferring®	functions: (1) transferring at least part of said individual transaction records from said storage means to said data processing means; and (2) transferring said individual transaction records including said summary reports to said personal computing data processing means structure: magnetic tape, disk, or data communication lines, or their equivalents

Additional processing [®]	more action upon or further manipulating
Individual transaction records [®]	records of discrete events

Dkt. No. 394 at 46.

On October 29, 2009, based on the claim construction set forth in the *Markman* Order and extensive briefing from the parties, the Court issued its Amended Order on summary judgment. See generally Dkt. No. 828. The Court concluded that the '270 Patent is valid, having not been rendered obvious by previously issued patents. *Id.* at 31. The Court further concluded that Qwest was not liable for direct infringement because it neither operated all potentially infringing aspects of the Accused Products nor directed its customers to use the Accused Products in an infringing manner. *Id.* at 34. Because it concluded that there was no underlying act of direct infringement, the Court concluded that Qwest could not be held liable for indirect infringement. *Id.*

Centillion appealed the Court's conclusion of non-infringement to the Federal Circuit. Dkt. No. 852 at 3. On May 2, 2011, the Federal Circuit issued an Order vacating in part, reversing in part, and remanding the case back to this Court. See generally *Centillion*, 631 F.3d 1279. The Federal Circuit concluded that Qwest did not engage in direct infringement. *Id.* at 1286. However, it further concluded that the standard operation of the Accused Products by Qwest's customers constitutes a use[®] for a direct infringement analysis, although it acknowledged that the use[®] determination was not a complete finding of infringement, as no comparison of the Accused Products and the claim limitations had occurred. *Id.* at 1285. It remanded the case to this Court for a determination as to whether Qwest could be held liable for indirect infringement based on its customers' use of the Accused Products. *Id.* at 1286.

Following remand, the parties filed the present Motions. Centillion requests a finding that Qwest indirectly infringed Claims 1 and 8 of the '270 Patent by providing the eBC application to customers and instructing them as to its use in an infringing manner. Dkt. No. 872 at 41. Qwest requests a finding of non-infringement as to the entirety of the '270 Patent, contending that the Accused Products do not meet all the claim limitations of the '270 Patent and, alternatively, Qwest did not have the requisite *mens rea* for indirect infringement. Dkt. No. 884 at 6B7. Since filing the Motions, the parties have filed a number of supplemental materials. See generally Dkt. Nos. 886, 889, 898, 901, 903, 905, 914B15, 920, 922B26.

The Court includes additional facts below as necessary.

II. STANDARDS

A. SUMMARY JUDGMENT

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); see also *United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267B68 (7th Cir. 1990). Motions for summary judgment are governed by Federal Rule of Civil Procedure 56(a), which provides in relevant part:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Once a party has made a properly-supported motion for summary judgment, the

opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials showing that a material fact is genuinely disputed. FED. R. CIV. P. 56(c)(1). A genuine dispute of material fact exists whenever there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.^e *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine dispute of material fact exists. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586B87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996). It is not the duty of the Court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying applicable evidence. See *Bombard v. Ft. Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996).

In evaluating a motion for summary judgment, the Court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. See *Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. See *Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. See *Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). If the moving party does not have the ultimate burden of proof on a claim, it is sufficient for the moving party to direct the court to the lack of evidence as to an element of that claim. See *Green v. Whiteco Indus., Inc.*, 17 F.3d 199, 201 & n.3 (7th Cir.

1994). If the nonmoving party fails to establish the existence of an element essential to [her] case, one on which [she] would bear the burden of proof at trial, summary judgment must be granted to the moving party.⁶ *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996).

B. PATENT INFRINGEMENT

Under 35 U.S.C. § 271(a), whoever without authority makes, uses, offers to sell, or sells any patented invention . . . within the United States . . . infringes the patent.⁶ Reviewing whether a particular device or system infringes a patent is a two-step process. See *CAE Screenplates v. Heinrich Fiedler GMBH*, 224 F.3d 1308, 1316 (Fed. Cir. 2000); *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362 (Fed. Cir. 1999). First, the Court must interpret the disputed claims, from a study of all relevant documents,⁶ to determine their scope and meaning. *K-2 Corp.*, 191 F.3d at 1362; see also *Dolly, Inc. v. Spalding & Evenflo Cos., Inc.*, 16 F.3d 394, 397 (Fed. Cir. 1994). Second, the Court must determine if the accused device, system, or process comes within the scope of the properly construed claims, either literally or by a substantial equivalent. See *K-2 Corp.*, 191 F.3d at 1362; *Dolly*, 16 F.3d at 397; *SmithKline Diagnostics v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988). In this case, the first phase of the infringement analysis, claim construction, occurred prior to the instant Motions. See Dkt. No. 394. Therefore, the Court's analysis focuses on the second phase of the infringement analysis.

The patent owner bears the burden of proving infringement. *Dynacore Holdings Corp. v. U.S. Phillips Corp.*, 363 F.3d 1263, 1273 (Fed. Cir. 2004). The Federal Circuit has found in this case that Qwest did not engage in direct infringement, either on its own

or through vicarious liability for any infringing acts by its customers. See *Centillion*, 631 F.3d at 1286. The present Motions, therefore, address indirect infringement only. There are two types of indirect infringement: contributory infringement and inducement to infringe. Both types of indirect infringement require an underlying act of direct infringement. *Akamai Techs., Inc. v. Limelight Networks, Inc.*, Nos. 2009-1372, -1380, -1416B17, 2012 WL 3764695, at *4 (Fed. Cir. Aug. 31, 2012) (per curiam) (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341 (1961); *Henry v. A.B. Dick Co.*, 224 U.S. 1, 12 (1912)).

III. DISCUSSION

As an initial matter, the parties disagree as to whether Centillion previously conceded that Qwest's customers must use Qwest's client software to directly infringe, as opposed to inputting data received from Qwest into a third-party application with similar functionality. In its opinion, the Federal Circuit noted in dicta that Centillion concedes that in order to infringe, the customer must install Qwest's client software.⁶ *Centillion*, 631 F.3d at 1286n.2. Centillion contends that it made no such concession and maintains that infringement may be found even if customers process records sent from Qwest using a third-party application rather than Qwest's software. However, a review of Centillion's appellate brief convinces the Court that Centillion made such a concession. Dkt. No. 883-1 at 5 (Only if the installation of the eBill Companion client application, the downloading of call data, and its importation into the eBC client application are completed according to Qwest's step-by-step directions are the customers' personal computers

adapted to perform additional processing as set forth in the claims. Centillion may not revoke an admission made before the Court of Appeals on remand to this Court. See *United States v. Cunningham*, 405 F.3d 497, 503B04 (7th Cir. 2005) (stating that a concession made in appellate brief is binding on the party). Therefore, the Court limits Centillion's claims to customers purportedly using Qwest's application, rather than a third-party application, to process records and proceeds accordingly.

A. DIRECT INFRINGEMENT

To prove direct infringement, Centillion must show by a preponderance of the evidence that every limitation of the claim asserted to be infringed has been found in the accused device, either literally or by equivalent. *Cross Med. Prods. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1310 (Fed. Cir. 2005). For terms construed as means-plus-function terms, infringement requires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification. *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 (Fed. Cir. 2006) (citing *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 324 F.3d 1308, 1320 (Fed. Cir. 2003)). A party may prove direct infringement by circumstantial evidence. *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1326 (Fed. Cir. 2009).

As the parties agree, and the Federal Circuit concluded, that Qwest did not directly infringe the '270 Patent, Centillion must show that direct infringement occurred through

Qwest's customers' use of the Accused Products.² The Federal Circuit concluded that Qwest's customers use the Accused Products as a matter of law, but the Court noted that this finding did not conclude the direct infringement inquiry. *Centillion*, 631 F.3d at 1285B86. The Court must still determine whether the Accused Products meet all limitations of the claim terms. *Cross Med. Prods.*, 424 F.3d at 1310. In this type of direct infringement analysis, where the steps allegedly constituting infringement are performed sequentially by numerous non-related actors, rather than a single company or actor, it must be shown that the Accused Products meet all the claim limitations when fully operated and that the Accused Products were indeed operated as such. *Cf. Akamai Techs.*, 2012 WL 3764695, at *4B*5.

1. CLAIM 1

The parties agree that the Accused Products encompass all of the following elements of Claim 1:

A system for presenting information concerning the actual cost of a service

² In one of its supplemental authority submissions, Centillion contends that the Federal Circuit en banc decision in *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2012 WL 3764695 (Fed. Cir. Aug. 31, 2012) (per curiam), undermines the Federal Circuit's previous statement in this litigation that "Qwest does not 'make' the patented invention . . . as a matter of law." See *Centillion*, 631 F.3d at 1288. Centillion argues that it should be permitted to argue that Qwest is a direct infringer through "making" the patented invention. See generally Dkt. No. 922.

Having reviewed *Akamai* and the Federal Circuit's decision in this case, the Court concludes that *Akamai* does not require reevaluation of the Federal Circuit's finding. *Akamai* states that "the party that adds the final element to the combination 'makes' the infringing product and is thus liable for direct infringement even if others make portions of the product." 2012 WL 3764695, at *11. In this case, there is little doubt that Qwest's customers complete the system by installing and using the Accused Products on their PCs. In other words, the final element is added by the customer, not Qwest. *Akamai* does not control clearly enough to justify deviation from the Federal Circuit's clear statement that Qwest is not a direct infringer under either the "use" or "make" standard. See *Centillion*, 631 F.3d at 1288.

Although Qwest still may be held liable as an indirect infringer if Qwest's customers are found to be direct infringers and other legal criteria are met, the Federal Circuit's decision as to Qwest's status as a direct infringer is the law of the case and will be upheld as such.

provided to a user by a service provider, said system comprising:

storage means for storing individual transaction records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction records from said storage means to said data processing means;

.....

means for transferring said individual transaction records . . . from said data processing means to said personal computer data processing means

>270 Patent col.31 ll. 39B55, 63B66. In other words, elements one, two, three, and four of Claim 1, as well as a portion of element six, are present in the Accused Products. See generally Dkt. No. 872; see also Dkt. No. 889 at 9.

However, Qwest contends that neither Logic nor eBC contain the other elements of Claim 1. Specifically, Qwest contends that Centillion has not proven that any of Qwest's customers use either Logic or eBC in a manner that satisfies the *As* specified by the user limitation of element five of Claim 1. See >270 Patent col.31 l.57. In addition, Qwest contends that the data processing means of the Accused Products do not generate *Asummary reports,* *Acreate database tables,* *Aedit data,* or *Asegregate data . . . by record type* as required by elements five, six, and seven, see *id.* at col.31 ll. 57, 64; col.32 l. 3, as well as the Court's construction of the means-plus-function limitations of the *Adata processing means* term. See Dkt. No. 394 at 31. The Court addresses these contentions in turn.

a. *As specified by the user*

The fifth element of Claim 1 requires Asaid data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means[.]²⁷⁰ Patent col.31 ll. 56B62. In the *Markman* Order, the Court construed *As specified by the user* to mean *the service the customer selects, or makes specific, the character of.* Dkt. No. 394 at 34. Centillion contends that both Logic and eBC satisfy the *As specified by the user* limitation through the use of PACs and that eBC's On-Demand functionality, as well as customizations to the .TXT files made in response to requests by particular customers also satisfy this limitation.

The Court concludes that inclusion of PACs in customer's billing information does not meet the *As specified by the user* limitation of the fifth element of Claim 1. Qwest's customers' use of PACs is configured completely outside of the Logic or eBC application framework, and PACs may be used by customers regardless of whether they analyze billing records with Logic, eBC, with a third-party application, or not at all. Dkt. No. 881 at 7 & 20. Customers may enter a PAC when placing a call, but they are not required to do so, and a section for PACs is included in the billing information provided by Qwest in conjunction with Logic or eBC even if customers choose not to enter a PAC. Dkt. No. 891-2 at 15B16. Inclusion of PACs in the billing information generated by Qwest is no different than inclusion of the telephone number dialed, a mere piece of data, and there is little doubt that dialing a particular telephone number does not satisfy the *As specified by*

the user® limitation. In short, the Court concludes that use of PACs does not meet the Aas specified by the user® limitation and, as such, the Logic product does not infringe Claim 1 of the '270 Patent.

In addition, the Court concludes Qwest's customization of eBC data files for particular customers does not satisfy the Aas specified by the user® limitation. Centillion contends that changes made to the .TXT files in response to customer feedback, such as from Wells Fargo, meet the Aas specified by the user® limitation. However, Centillion concedes that customers who have had their data files customized cannot use the eBC client application software. Dkt. No. 884 at 19 (Statement of Material Facts Not in Dispute ¶ 37 ("SMFND ¶ 37")); Dkt. No. 886 at 13n.10 (stating that Centillion does not dispute Qwest's SMFND ¶ 37, among others). As discussed above, Centillion has already conceded that infringement requires use of the eBC client application software. Therefore, the Court concludes that any Acustomization® of eBC data files alleged by Centillion does not meet the Aas specified by the user® limitation of Claim 1.

However, the Court concludes that use of eBC's On-Demand feature does meet the Aas specified by the user® limitation. On-Demand allows a customer to submit a request to receive billing information for a particular previous billing cycle. Dkt. No. 881 at 7 & 22. In doing this, the customer Aselects . . . the character of® the information being provided, specifying that the information cover only a particular time period. Qwest argues that because the time period selected is limited by billing cycleCin other words, a customer cannot request just any time period, but instead the time period requested must correspond to a billing cycleCthe Aas specified by the user® limitation is not met. However, Aas specified by the user® does not require as much flexibility as Qwest would

like, and it is sufficient that the customer may select a subset of available time ranges, even if that selection must correspond to a particular billing cycle.

Having determined that use of the On-Demand feature meets the *As* specified by the user^e limitation, the Court still must determine what evidence is necessary to show this element. Qwest contends that Centillion must bring forth evidence of specific customers that specified the character of the data and reports they were receiving, above and beyond evidence that the On-Demand feature provides the capacity to allow customers to make those selections. Centillion contends that the Court's claim construction of *Adata processing means*^e in conjunction with *As* specified by the user^e renders the limitation one of capability, not actual operability.

Examining the language of the claims, the Court concludes that mere capacity is insufficient. The fifth element of Claim 1 speaks of a *Adata processing means generating . . . reports as specified by the user,*^e language that speaks of the data processing means taking some sort of action to bring the reports into existence. However, Qwest's contention that Centillion must bring forth evidence such as customer deposition testimony of use of the On-Demand feature asks too much, as Centillion may prove that the feature was used through circumstantial evidence. *Vita-Mix Corp.*, 581 F.3d at 1326. Reviewing the evidence, the Court concludes a genuine dispute of material fact exists as to whether at least one of Qwest's customers used the On Demand feature. For instance, Nick Bates of MedQuist, Inc. sent a complaint to Qwest's help desk stating, *I am trying to download On-Demand files, I receive the emails that state that they are completed, but they do not appear on the website for me. A co-worker of mine has no problem with this feature.*^e Dkt. No. 886-9 at 3. Contrary to Qwest's argument, this is

more than the descriptions in the user's manual found insufficient by the Federal Circuit in *Mirror Worlds*. See *Mirror Worlds, LLC v. Apple, Inc.*, No. 2011-1392, 2012 WL 3800812, at *8B*9 (Fed. Cir. Sept. 4, 2012). The Court concludes that use of eBC's On-Demand feature meets the "as specified by the user" limitation of Claim 1 and that there is a factual dispute as to whether Qwest's customers actively used the feature.

b. Means-plus-function construal of "data processing means"

Qwest contends that eBC does not have a "data processing means" as that term was construed in the *Markman* Order.³ Centillion contends that eBC Back Office, LATIS, or a combination thereof is a "data processing means" as defined by the Court. The Court construed "data processing means" as a means-plus-function term under 35 U.S.C. ' 112, & 6. Specifically, the Court concluded that a data processing means performs the functions of (1) generating preprocessed summary reports and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means. Dkt. No. 394 at 31. The structure corresponding to these functions was construed as "a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data into a PC-compatible format and its equivalents." *Id.* As noted above, infringement of a means-plus-function term requires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the

³ The Court has concluded that the Logic product does not contain the "as specified by the user" limitation of Claim 1, therefore, it will not address the other limitations of that claim with respect to the Logic product.

corresponding structure in the specification.⁶ *Applied Med. Res. Corp.*, 448 F.3d at 1333. Equivalence in structure may be proven by showing that [] two [structures] perform the identical function in substantially the same way, with substantially the same result.⁶ *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1364 (Fed. Cir. 2000).

Examining the required functions of the data processing means, the Court concludes that the eBC Back Office and LATIS, or a combination thereof, generates preprocessed summary reports as required by the claims. In the *Markman* Order, the Court defined a summary report⁶ as a collection of analyzed and/or reorganized data.⁶ Dkt. No. 394 at 41. The Court left open the possibility that a report including all billing information for a particular customer would constitute a summary report and did not place any limitation on the format of the summary report. *Id.* The eBC Back Office organizes the billing information by customer and inserts that information into various .TXT files, although viewing of these .TXT files requires additional .FMT files constructed by Qwest personnel outside of the eBC framework. Dkt. No. 892 at 4 & 6. These .TXT files, even apart from the .FMT files, are sufficient to constitute summary reports as that term has been construed, as they include a collection of . . . reorganized data.⁶ Centillion has brought forth evidence that at least some of Qwest's customers receive their billing information and use it in eBCC in other words, at least some of Qwest's customers receive the .TXT files, preprocessed summary reports. *See, e.g.*, Dkt. No. 872 at 18 & 27. Therefore, the Court concludes that eBC Back Office generates a preprocessed summary report.

Turning to the other required function of the data processing means, however, the Court concludes that eBC Back Office, LATIS, or a combination thereof, does not

Aorganiz[e] said summary reports into a format for storage manipulation and display on a personal computer data processing means.⁶ See Dkt. No. 394 at 31. Although LATIS and eBC Back Office perform the steps necessary to create a summary reportCthe relevant .TXT fileCneither of those systems organize the summary reports into a format for display on a personal computer. Instead, the customer must be provided with a .FMT file and schema within the eBC client application to interact with the .TXT file and allow display of the summary reports on a personal computer. Dkt. No. 892 at 4 & 6. The .FMT file is generated by Qwest personnel apart from either LATIS or eBC Back Office. *Id.* Neither LATIS nor eBC Back OfficeCthe alleged data processing meansCperforms the steps necessary to format the .TXT file for display. Because Centillion has not brought forth evidence that the so-called data processing means Aorganiz[e] . . . summary reports into a format for . . . display,⁶ the Court concludes that eBC fails to perform a required function of the data processing means and, therefore, fails to meet all limitations of Claim 1.

As noted above, direct infringement requires that every limitation of the claim asserted to be infringed has been found in the accused device, either literally or by equivalent. *Cross Med. Prods.*, 424 F.3d at 1310. For means-plus-function limitations, the relevant structure must Aperform the identical function recited in the claim.⁶ *Applied Med. Res. Corp.*, 448 F.3d at 1333. Because the Court concludes that the data processing means of eBC does not perform all required functions set forth in the limitations of Claim 1, the Court concludes that eBC does not infringe Claim 1 of the >270 Patent.

2. CLAIM 8

Claim 8 tracks Claim 1 specifying operation by Atelecommunications service providers[®] and involving Atelecommunication usage records.[®] See generally *270 Patent* col.32 ll. 30B46. As the parties do not dispute that Qwest is a Atelecommunications service provider[®] and any records distributed by Qwest are Atelecommunication usage records,[®] the direct infringement analysis for Claim 8 is identical to the analysis for Claim 1. See *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1371 (Fed. Cir. 2003) (requiring identical construction of identical claim terms). Because, as discussed above, neither Logic nor eBC infringe all the limitations of Claim 1, and the relevant limitations of Claim 8 contain identical claim terms, the Court concludes that Logic and eBC do not infringe Claim 8 of the *270 Patent*.⁴

B. INDIRECT INFRINGEMENT

In order for Qwest to be held liable for indirect infringement (either contributory infringement or inducement of infringement) an underlying act of direct infringement, in this case committed by Qwest's customers, must be shown. *Akamai Techs.*, Nos. 2009-1372, 1380, 1416B17, 2012 WL 3764695, at *4 (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341 (1961); *Henry v. A.B. Dick Co.*, 224 U.S. 1, 12 (1912)); see also *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1364 (Fed. Cir. 2012). As discussed

⁴ As Claims 10 and 46 of the *270 Patent* are dependent claims based on Claim 8, the Court concludes that Logic and eBC do not infringe those Claims either. Likewise, having concluded that neither Logic nor eBC infringe any of the asserted claims, the Court also concludes that, as a functional equivalent of either of those products, Insite also does not infringe the asserted claims.

above, the Accused Products fail to satisfy all claim limitations of the '270 Patent and, therefore, no direct infringement has occurred. Consequently, Qwest cannot be held liable for indirect infringement⁵ and is entitled to summary judgment.

IV. CONCLUSION

For the reasons set forth herein, the Court rules as follows:

- 1) Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings) Inc.-s Motion for Partial Summary Judgment of Infringement [Dkt. No. 871] is **DENIED**.
- 2) Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation-s Motion for Summary Judgment of Non-Infringement [Dkt. No. 880] is **GRANTED**.
- 3) Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings), Inc.-s Request for Oral Argument on Their Motion for Partial Summary Judgment of Infringement [Dkt. No. 879] is **DENIED**.
- 4) Qwest's Motion for Leave to File a Sur-Reply to Centillion's Reply in Support of Its Notice of Supplemental Authority [Dkt. No. 918] is **DENIED**.
- 5) Centillion-s Renewed Motion for Oral Argument on Motions for Summary Judgment [Dkt. No. 921] is **DENIED**.

IT IS SO ORDERED this 15th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distribution attached.

⁵ Because Centillion has not shown that direct infringement has occurred, the Court declines to address whether Qwest had the requisite *mens rea* to indirectly infringe the '270 Patent.

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EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff)	
)	
vs.)	
	)	1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	

QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
)	
vs.	)	1:04-cv-2076
	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC)	
and CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

ORDER

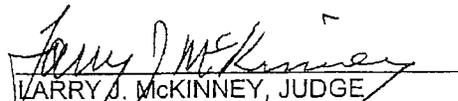
Defendants Qwest Corporation and Qwest Communications International, Inc. and Consolidated Plaintiff, Qwest Communications Corporation (collectively "Qwest") have moved for an amendment of the Entry of Judgment entered in this cause on October 15, 2012, to add language to reserve to Qwest its invalidity defenses in case this cause returns to this Court for further consideration. The Court sees no just reason to deny this motion.

Further, Qwest also requests that the Court reconsider its Order denying Qwest its costs as set forth in its Bill of Costs filed November 17, 2009, Dkt. No. 830. See Dkt. No. 932. The Court concludes that it misapprehended the discretion allowed by Rule 54(d)(1) of the Federal Rules of Civil Procedure ("Rule 54(d)(1)") as set forth in Seventh

Circuit precedent concluding that it is incumbent upon the unsuccessful party to show that the prevailing party should be penalized by a denial of costs. See e.g. *Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co.*, 854 F.2d 219, 221-22 (7th Cir. 1988) (concluding that the district court's discretion in awarding costs is narrowly confined by misconduct of the prevailing party or an inability of the losing party to pay) (citing, *inter alia Popell Bros., Inc. v. Schick Elec., Inc.*, 516 F.2d 772, 774-75 (7th Cir. 1975)). No such showing has been made by Plaintiff Centillion Data Systems, LLC.

Qwest's Motion to Amend Entry of Judgment dated October 15, 2012 (Dkt. No. 931), is **GRANTED**. In addition, Qwest's Motion to Reconsider (Dkt. No. 932) is also **GRANTED**. An amended Judgment shall be entered accordingly.

IT IS SO ORDERED this 30th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distributed to all attorneys of record via CM/ECF.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-cv-0073-LJM-DKL
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC., and QWEST)	
CORPORATION,)	
)	
<i>Defendants.</i>)	
<hr/>		
	)	Case No. 1:04-cv-2706
QWEST CORPORATION; QWEST	)	<i>(consolidated with above)</i>
COMMUNICATIONS CORPORATION,)	
)	
<i>Consolidated Plaintiffs,</i>)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC)	
)	
<i>Consolidated Defendant.</i>)	
)	
<hr/>		

**QWEST’S RESPONSE TO CENTILLION’S
MOTION TO RECONSIDER AND TO AMEND
THE JUDGMENT ENTERED ON OCTOBER 30, 2102**

Qwest¹ hereby submits its Response to Plaintiff Centillion Data Systems, LLC’s (“Centillion”) Motion to Reconsider the Court’s Order Granting Qwest’s Motion to Amend the Judgment and to Amend the Judgment Entered on October 30, 2012. (ECF No. 935). On October 15, 2012, this Court entered judgment in favor of Qwest on Centillion’s claims that Qwest infringed United States Patent No. 5,287,270. (ECF No. 929). That same Order, however, stated

¹ Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation (collectively, “Qwest”).

that “each party shall bear its own costs.” *Id.* Therefore, on October 23, 2012, Qwest filed a Motion to Reconsider Entry of Judgment Dated October 15, 2012. Qwest noted in its Motion that it was the prevailing party, and that it would not seek any additional costs other than those previously filed on November 17, 2009 (ECF No. 830). On October 30, 2012, this Court granted Qwest’s motion to reconsider and awarded Qwest its costs. (ECF Nos. 934 and 935).

On November 5, 2012, Centillion filed a motion to reconsider this Court’s award on the grounds that it was premature. (ECF No. 936.) Centillion also argued that costs related to deposition transcripts and photocopies were insufficiently supported. *Id.* Centillion did not, however, dispute that Qwest is the prevailing party here. Centillion argued only that it was not provided the opportunity to object to the amount of those costs.

On November 13, 2012, Centillion then filed a Notice of Appeal to the United States Court of Appeals for the Federal Circuit seeking to appeal both the October 15, 2012 Order entering judgment in Qwest’s favor, as well as the October 30, 2012 Order awarding Qwest its costs.² Qwest hereby files a response to Centillion’s motion to reconsider this Court’s award of costs so that the record remains clear, as the costs set forth in Qwest’s Bill of Costs at ECF No. 830 remain the costs incurred by Qwest to defend this case in the district court, regardless of the fact that Centillion has now filed a second appeal. As Centillion admits, “If Qwest remains the prevailing party after all appeals are exhausted, the Court has the discretion to award it costs that are allowable under § 1920 and reasonable in amount.” (ECF No. 936 at 6.)

I. QWEST IS THE PREVAILING PARTY HERE AND THEREFORE ENTITLED TO COSTS

Federal Rule of Civil Procedure 54(d) provides that “[u]nless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney’s fees – should be allowed to the prevailing party.” Fed. R. Civ. P. 54(d)(1). “There is a heavy presumption in favor of awarding costs to the prevailing party.” *Halasa vs. ITT Educ. Servs., Inc.*, No. 1:10-cv-437-WTL-MJD,

² Qwest notes that, when a judgment is affirmed on appeal, the appellate court has discretion to award the prevailing party damages for the delay and single or double costs. 10 Charles Alan Wright et al, *Federal Practice and Procedure* § 2668 (3d ed. 1998).

2012 U.S. Dist. LEXIS 24664, at *2 (S.D. Ind. Feb. 27, 2012), quoting *Majeske v. City of Chicago*, 218 F.3d 816, 824 (7th Cir. 2000.) As this Court noted in its October 30, 2012 Order, “it is incumbent upon the unsuccessful party to show that the prevailing party should be penalized by a denial of costs,” citing *Congregation of the Passion, Holy Cross Province v. Touche, Ross, & Co.*, 854 F.2d 219, 221-22 (7th Cir. 1988). “The presumption is difficult to overcome, and the district court’s discretion is narrowly confined. Rule 54(d) establishes a ‘principle of preference;’ the district court must award costs unless it states good reasons for denying them.” *Congregation of the Passion*, 854 F.2d at 222. See also *Beamon v. Marshall & Ilsley Trust Co.*, 411 F.3d 854, 864 (7th Cir. 2005) (holding that the losing party bears the burden of an affirmative showing that costs are not appropriate).

Centillion does not dispute that Qwest is the prevailing party. Thus, there is no question that Qwest is entitled to costs. The only questions Centillion raises are whether this Court’s Order awarding costs was premature, and whether the amount of those costs was reasonable. As set forth below, the Court was within its discretion to award costs of its own accord, without action by the clerk taxing those costs. In any event, Centillion has now had an opportunity to submit its objections to those costs, and has done so in its motion to reconsider. As shown below, Qwest’s costs are amply supported in accordance with applicable case law.

II. THE COURT HAS INHERENT POWER TO TAX COSTS

This Court’s October 30, 2012 Order awarding costs was not premature because it preceded action by the clerk, as Centillion argues, because the court has the inherent authority to tax costs. While Centillion is correct that costs are often awarded after the clerk taxes them, a district court may also do so directly on its own.³ For example, in *BDT Products, Inc. v. Lexmark*

³ On page 3 of its brief, Centillion quotes one sentence from the Wright & Miller treatise (“[N]othing normally can come before the court until the clerk has acted and an objection has been made”), but neglects to cite the exceptions that immediately follow that sentence regarding the district court’s inherent power to consider such costs directly. See 10 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2679 at 488, citing *BDT Prods., Inc. v. Lexmark Int’l, Inc.*, 405 F.3d 415 (6th Cir. 2005); *U.S. v. 2,186.63 Acres of Land, Wasatch County, Utah*, 464 F.2d 676 (10th Cir. 1972); *Syracuse Broad. Corp. v. Newhouse*, 32 F.R.D. 29 (S.D.N.Y. 1963), *aff’d*, 319 F.2d 683 (2d Cir. 1963); *Deering, Milliken & Co. v. Temp-Resisto Corp.*, 169 F. Supp. 453 (S.D.N.Y. 1959).

International, Inc., 405 F.3d 415 (6th Cir. 2005), the Sixth Circuit held that the district court has the inherent and statutory authority to act on costs prior to any action by the clerk on three separate grounds: (1) “that the language of Fed. R. Civ. P. 54(d) -- “may be taxed by the clerk” -- is permissive rather than mandatory”; (2) that 28 U.S.C. § 1920 expressly provides that either a “judge or clerk” may tax costs; and (3) “any decision by the clerk would have been subject to *de novo* review by the district court.” *BDT Prods.*, 405 F.3d at 417-419, citing, e.g., *Deering, Milliken & Co.*, 169 F. Supp. 453 at 456 (“There is no merit in the defendants’ contention that Rule 54(d) . . . requires that costs must be taxed in the first instance by the clerk and that the Court has no power to tax them.”). *See also Taylor v. Watkins*, No. 10-4-GPM, 2010 U.S. Dist. LEXIS 64729, at *1 (S.D. Ill. June 30, 2010) (“The Court has inherent power to tax costs.”) Thus, the Court can deny Centillion’s motion to reconsider on the sole ground that the October 30, 2012 Order was an exercise of the Court’s inherent authority to tax costs.

III. THE AWARD OF COSTS SHOULD STAND

Even if the Court granted Centillion’s motion to reconsider, and considered its objections, the award of costs should stand. Centillion’s objections are without merit, its characterization of the caselaw is misleading, and Qwest’s costs are sufficiently supported. For example, to support its misleading arguments that deposition transcripts and photocopies must have been directed to “presenting evidence to the court” and that “many of the [deposition] transcripts were not essential to the Court’s rulings” (ECF No. 936 at 5), Centillion provides an incomplete quotation of caselaw, quoting only half of a sentence: “The Seventh Circuit has interpreted ‘for use in the case’ to mean ‘actually prepared for use in presenting evidence to the court’” *Id.* However, the remainder of that sentence states, “while recognizing that ‘the underlying documents need not be introduced at trial in order for the cost of copying them to be recoverable.’” *J&W Fence Supply Co., Inc. v. United States*, No. IP 97-0128-C-Y/S, 1999 U.S. Dist. LEXIS 15296, at *2 (S.D. Ind. Sept. 3, 1999). The *J&W* court goes on to state that, “[t]he caselaw suggests that a court should award photocopying costs when copying discovery documents appears necessary to litigate the prevailing party’s case.” *Id.* at *3 (citation omitted).

While Centillion argues that Qwest must provide detailed information relating to number of copies and rates charged per page, the requirement in the Seventh Circuit is to provide the “best breakdown obtainable from retained records.” *Northbrook Excess & Surplus Ins. Co. v. Procter & Gamble Co.*, 924 F.2d 633, 643 (7th Cir. 1991). In *Northbrook*, the Seventh Circuit rejected the contention that the prevailing party’s photocopying expenses lacked proper documentation because the party failed to identify any document copied, the number of copies made of each original, or the copying cost per page, stating, “[o]f course, [the prevailing party] was not required to submit a bill of costs containing a description so detailed as to make it impossible economically to recover photocopying costs.”). The Seventh Circuit further stated that “the court realized that a copying bill of more than \$50,000 was large, but found that it was not excessive ‘in the context of a six-year paper war.’” *Id.* Indeed, the Seventh Circuit noted that, “[w]e have, on past occasions, upheld rather large photocopying costs produced as a result of long, paper intensive litigation.” *Id.* at 643 n.13 (citations omitted).

In the instant case, which has been ongoing for 9 years, the parties engaged in a discovery war precipitated by Centillion’s very broad discovery requests that encompassed numerous accused systems. *See* Declaration of Vincent Belusko, ¶ 2 (filed contemporaneously herewith). The parties have filed 939 documents with the Court, and Qwest has produced over 3 million pages of documents. *Id.* The documentation attached to Qwest’s AO Form 133 accurately reflects the information contained in its records and invoices, and is more than sufficient, especially when one considers the age and duration of the case. *Id.* at ¶ 4. The law requires no more.

Nor is the standard for obtaining costs associated with deposition transcripts as onerous as Centillion makes it appear: “The proper inquiry is whether the deposition was ‘reasonably necessary’ to the case at hand at the time it was taken, not whether it was used in a motion or in court.” *See Cengr v. Fusibond Piping Sys., Inc.*, 135 F.3d 445, 455 (7th Cir. 1998). “Introduction of a deposition at trial is not a prerequisite for finding that it was necessary to take the deposition.” *Endress + Hauser, Inc. v. Hawk Measurement Sys. Pty., Ltd.*, 922 F. Supp. 158, 161 (S.D. Ind.

1996) quoting *Hudson v. Nabisco Brands, Inc.*, 758 F.2d 1237, 1243 (7th Cir. 1985), overruled on other grounds. Rather, the relevant question is “whether the particular deposition was reasonably necessary to the case.” *Id.* Reasonable necessity is considered in light of the facts at the time the deposition was taken without regard to intervening developments that render the deposition unneeded for further use. *Hudson*, 758 F.2d at 1253. As Centillion does not argue that the depositions taken in this case were not reasonably necessary at the time they were taken, the costs associated with those depositions should stand.

IV. CONCLUSION

For the foregoing reasons, Qwest respectfully asks that the Court deny Centillion’s motion to reconsider and decline to amend the judgment entered on October 30, 2012.

Dated: November 16, 2012

/s/ Vincent J. Belusko
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Counter-Plaintiff, Qwest Communications Corporation

CERTIFICATE OF SERVICE

I certify that on November 16, 2012, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties who have consented to such service by operation of the Court's electronic filing system:

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--	---

/s/ Vincent J. Belusko
Vincent J. Belusko

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-cv-0073-LJM-DML
)	
Plaintiff,)	
)	
v.)	
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC., and QWEST)	
CORPORATION,)	
)	
Defendants.)	
_____)	
	)	Case No. 1:04-cv-2076
QWEST CORPORATION; QWEST	)	<i>(consolidated with above)</i>
COMMUNICATIONS CORPORATION,)	
)	
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC)	
)	
Consolidated Defendants.)	
_____)	

**DECLARATION OF VINCENT J. BELUSKO IN SUPPORT OF QWEST'S RESPONSE
IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER AND TO AMEND
THE JUDGMENT ENTERED ON OCTOBER 30, 2012**

I, Vincent J. Belusko, declare:

1. I am an attorney admitted to practice in California and am a partner with Morrison & Foerster LLP, counsel of record for the Qwest parties. I have been admitted *pro hac vice* in the above-captioned matter. I make this declaration of my own personal knowledge, and if called upon as a witness, I could and would testify competently to the matters stated herein.

2. This case has been ongoing for 9 years. The parties engaged in a discovery war precipitated by Centillion's broad discovery requests, which encompassed numerous accused systems. The parties have filed 939 documents with the Court, and Qwest has produced over 3 million pages of documents.

3. Throughout this long, paper intensive litigation, photocopying was handled by both in-house and outside copy services. In-house black and white copies ranged from \$.05 to \$.10 per page and color copies were done at \$.70 per page. Outside vendors charged \$.08 to \$.14 for black and white copies, and \$.75 for color copies.

4. In support of these expenses and pursuant to Local Rule 54.1, Qwest submitted the Court's preferred Bill of Costs form, AO Form 133. (ECF No. 830.) The documentation attached to Qwest's AO Form 133 accurately reflects the information contained in its records and invoices. (ECF No. 830-2.)

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of November 2012, at Los Angeles, California.

/s/ Vincent J. Belusko
Vincent J. Belusko

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
Plaintiff,)
)
vs.)
) 1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)
INTERNATIONAL, INC. and QWEST)
CORPORATION,)
Defendants.)

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,)
Consolidated Plaintiffs,)
) 1:04-cv-2076
vs.) (consolidated with above)
)
CENTILLION DATA SYSTEMS, LLC)
and CTI GROUP (HOLDINGS), INC.,)
Consolidated Defendants.)

ORDER ON PLAINTIFF'S MOTION TO RECONSIDER

The Court entered judgment in favor of Defendants Qwest Communications International, Inc. and Qwest Corporation (collectively "Qwest") and against Plaintiff Centillion Data Systems, Inc. ("Centillion") on October 15, 2012. In that order the Court stated that both parties were to bear their own costs. Qwest then asked the Court to reconsider the costs ruling. The Court did reconsider and amended the Judgment to include the requested costs. Centillion has responded to the Court's amended order by filing a Motion to Reconsider of its own. Centillion points out that this Court did not give it time to respond to Qwest's Reconsideration Motion and challenges Qwest's request for costs. The Court agrees with Centillion that it should reconsider the entry of costs in light of Centillion's objections.

Having considered Centillion's objections, the Court now finds against Centillion and reaffirms its decision accessing costs. It is undisputed that Qwest is the prevailing party and is entitled to costs. The costs previously entered are not unreasonable. It remains the Court's view that the photo copying request is both reasonable and recoverable. Qwest's position that the copies were necessary to litigate its case is supported by its proffered breakdown. This case has been pending for nine years. To say that it has been paper intensive is an understatement.

Qwest's request for costs associated with depositions is likewise supported by its filings. Qwest's position that the billed depositions were necessary to the case is well founded. In short, while the Court issued its order on costs without giving Centillion a chance to challenge the request, the Court finds the challenge insufficient to require a change of its prior order.

Centillion's Motion to Reconsider is **GRANTED in part and DENIED in part**: To the extent the Motion asks the Court to review its prior entry in light of Centillion's arguments, the Motion is **GRANTED**; to the extent the Motion seeks an amendment to the Court's order on costs, the Motion is **DENIED**.

IT IS SO ORDERED this 20th day of November, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Electronically distributed to all registered counsel of record via CM/ECF.

on October 15, 2012, ECF No. 929 (Exhibit B hereto); the Order granting the Qwest Defendants' Motion to Reconsider Entry of Judgment Dated October 15, 2012 (ECF No. 932), entered in this action on October 30, 2012, ECF No. 933 (Exhibit C hereto); and the Order on Plaintiff's Motion to Reconsider (ECF No. 935), entered in this action on November 20, 2012, ECF No. 941 (Exhibit D hereto).

Centillion is filing this Amended Notice of Appeal as a precautionary measure because the Court entered its Order on Plaintiff's Motion to Reconsider on November 20, 2012, after Centillion had filed its Notice of Appeal on November 13, 2012 (ECF No. 937).

DATED: November 30, 2012

Respectfully submitted,

/s/ Phillip J. Fowler

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CERTIFICATE OF SERVICE

I certify that on September 20, 2012, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system:

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/s/ Phillip J. Fowler _____

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
Plaintiff)
vs.) 1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)
INTERNATIONAL, INC. and QWEST)
CORPORATION,)
Defendants.)

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,)
Consolidated Plaintiffs,)
vs.) 1:04-cv-2076
(consolidated with above)
CENTILLION DATA SYSTEMS, LLC)
and CTI GROUP (HOLDINGS), INC.,)
Consolidated Defendants.)

AMENDED ENTRY OF JUDGMENT

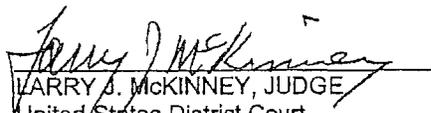
Through an Order dated October 15, 2012, the Court granted summary judgment in favor of Defendants, Qwest Communications International, Inc. and Qwest Corporation ("Qwest"), and against Plaintiff, Centillion Data Systems, LLC, on Plaintiff's claims that Defendants infringed United States Patent No. 5,287,270. Plaintiff shall take nothing by way of its Complaint.

Additionally, Defendants Qwest assert several affirmative defenses, including defenses of invalidity, affirmative defenses directed at unenforceability and a claim for invalidity raised in a declaratory judgment action directed at United States Patent No. 5,287,270. To promote judicial economy, the Court dismisses all of Defendants Qwest's affirmative defenses and its declaratory judgment claim for invalidity without

prejudice to Defendants Qwest's rights to re-raise the affirmative defenses and declaratory judgment claim in the future in this action to the extent that the affirmative defenses and declaratory judgment claim could have been asserted on or before October 15, 2012, if this action is remanded for further consideration.

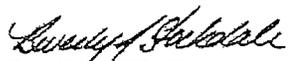
Defendant Qwest is hereby awarded its costs in the amount of \$251,245.95 as set forth at Docket No. 830.

IT IS SO ORDERED this 30th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Date: 10/30/12

Laura Briggs, Clerk
United States District Court


By: Deputy Clerk

Distribution to all counsel of record via CM/ECF.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
Plaintiff)
)
vs.)
) 1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)
INTERNATIONAL, INC. and QWEST)
CORPORATION,)
Defendants.)

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,)
Consolidated Plaintiffs,)
)
vs.) 1:04-cv-2076
) (consolidated with above)
)
CENTILLION DATA SYSTEMS, LLC)
and CTI GROUP (HOLDINGS), INC.,)
Consolidated Defendants.)

ORDER

Pending before the Court are two motions for summary judgment (AMotions®): Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings) Inc.-s (collectively, ACentillion®) Motion for Partial Summary Judgment of Infringement [Dkt. No. 871],¹ and Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation's

¹ Contemporaneously with the Motions, Centillion filed Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings), Inc.-s Request for Oral Argument on Their Motion for Partial Summary Judgment of Infringement [Dkt. No. 879]. Subsequently, the request was renewed in Centillion-s Renewed Motion for Oral Argument on Motions for Summary Judgment [Dkt. No. 921]. The Court has sufficient information to decide the Motions without oral argument and, therefore, **DENIES** Centillion-s requests for oral argument [dkt. nos. 879, 921].

In addition, following the submission of supplemental authority and briefing on the same, Qwest filed its Motion for Leave to File a Sur-Reply to Centillion-s Reply in Support of Its Notice of Supplemental Authority [Dkt. No. 918]. The Court concludes that a surreply is unnecessary given the extensive briefing already file and **DENIES** Qwest-s motion [dkt. no. 918].

collectively, AQwest®) Motion for Summary Judgment of Non-Infringement [Dkt. No. 880].

The Court has considered the parties' arguments and evidence and rules as follows.

I. BACKGROUND

On February 15, 1994, the United States Patent and Trademark Office issued United States Patent No. 5,287,270 (the '270 Patent), titled Billing System, to Compucom Communications Corporation. '270 Patent. Broadly speaking, the '270 Patent allows telephone service providers to provide subscribers with detailed call information that can be easily organized and analyzed. *Id.* Following a corporate reorganization, the '270 Patent was transferred to its current owner, Centillion Data Systems, LLC. Dkt. No. 872 at 4 & 2.

A. RELEVANT CLAIMS OF THE '270 PATENT

Centillion accuses Qwest of infringing claims 1, 8, 10, and 46 of the '270 Patent.

Dkt. No. 884 at 7 & 2. Those claims recite:

1. A system for presenting information concerning the actual cost of a service provided to a user by a service provider, said system comprising:

storage means for storing individual transactions records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction from said storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said individual transaction records including said summary reports from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said individual transaction records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said selected records including said exact charges actually billed to said user.

* * *

8. A system for presenting, under control of a user, usage and actual cost information relating to telecommunications service provided to said user by a telecommunications service provider, said system comprising:

telecommunications service provider storage means for storing records prepared by a telecommunications service provider relating to telecommunications usage for one or more telecommunications subscribers including said user, and the exact charges actually billed to said user by said service provider for said usage;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of the records from said service provider storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said telecommunications usage records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said telecommunications usage records including said summary reports from said data processing means to said personal computer data processing means;

said personal computer data processing means being adapted to perform additional processing on said telecommunications records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said telecommunications usage records including said exact charges actually billed to said user.

* * *

10. A system as in claim 8 wherein said selected records relating to telecommunications usage and cost comprise at least one telecommunications call detail record corresponding to a unique telecommunications call to be billed to said subscriber, said call having a length determined by said telecommunications carrier.

* * *

46. A system as in claim 8 wherein an information interchange media means in the form of a data communications line is employed for transferring said selected records from said data processing means to said personal computer data processing means.

>270 Patent col.31 l. 39Bcol.36 l. 7.

B. QWEST-S PRODUCTS

Centillion contends that Qwest infringed the >270 Patent through its Logic, eBill Companion, and Insite products (collectively, Accused Products®). Centillion moves for summary judgment only as to the eBill Companion (eBC®) application. Dkt. No. 872 at 12n.5. However, Qwest has moved for summary judgment of non-infringement as to all of the Accused Products. Dkt. No. 884 at 9.

The parties agree that Qwest was aware of the >270 Patent prior to the design and introduction of both Logic and eBC. Dkt. No. 883-6 at 7B8; Dkt No. 881 at ¶ 5. Qwest contends that it attempted to design around the >270 Patent and, as a result, the Accused Products were less robust than desired.® Dkt. No. 884 at 16 & 20. While designing the

Accused Products, Qwest's designers purportedly did not seek legal advice as to whether their design effectively designed around the '270 Patent, instead relying on internal discussions among designers. Dkt. No. 886-5 at 4.

Logic is the predecessor system to eBC and was introduced in 1997; it was discontinued in 2002 except for use by specific customers. Dkt. No. 881 at 2 ¶ 4; Dkt No. 883-6 at 9. Qwest introduced eBC in 2002. Dkt. No. 872-1 at 11. Insite is a product offered to BellSouth customers, and Centillion contends that Insite is functionally identical to both Logic and eBC, see Dkt. No. 828 at 8; see also *Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1281 (Fed. Cir. 2011), therefore, addressing infringement of the Logic and eBC products in detail will resolve the infringement issue with respect to Insite. All of the Accused Products are available to commercial customers. Dkt. No. 883-9 at 5.

There are two parts to either the Logic or the eBC product: a back-end system and the Qwest client application software. Dkt. No. 881 at 2 ¶ 3. See also *Centillion Data Sys.*, 631 F.3d at 1281. The back-end systems collect electronic monthly billing information. Dkt. No. 881 at 2 ¶ 3. Qwest sends the billing information either by CD-ROM or by download to individual customers for their use. *Id.* Qwest customers may choose to install Qwest client application software, such as Logic or eBC, on a personal computer, which allows for additional functionality, but the Qwest software is not necessary to utilize the monthly billing information. Dkt. No. 872-10 at 33. See also *Centillion*, 631 F.3d at 1281. The billing information consists of call detail records (ACDRs®) for each discrete call captured by Qwest's telecom switches. Dkt. No. 872 at 13 & 10; Dkt. No. 881 at 2 ¶ 3. The Accused Products permit display and billing analysis

of long-distance telecommunications usage for particular customers. Dkt. No. 872-10 at 12; Dkt. No. 881 at 2 ¶ 3.

To prepare the billing information sent to customers, the CDRs captured through Qwest's telecom switches are processed in the LATIS systemCa software application that runs on various serversCwhere each CDR is rated to include the exact charges actually billed for a given call. Dkt. No. 872 at 13B14 && 11, 13. This rating process includes application of various promotional pricing and discounts. *Id.* The rated CDRs are stored in several locations in Qwest's architecture, including the Billing Data Server (ABDS®), which is a hard disk device capable of receiving, retaining, and supplying data. *Id.* at 14 & 12. In eBC, from the BDS, CDRs are transferred via data communication lines to eBC Back Office, a software application written in Java and XML, upon request. *Id.* at 14 && 13B14.

Qwest customers may register to use a feature called project account codes or "PACs" in both the Logic and eBC products. PACs allow a customer to insert codes corresponding to particular employees, types of calls, or offices. *Id.* at 7 & 20. A customer using this feature enters the relevant PAC in addition to dialing the relevant telephone number; the PAC data becomes part of the CDR for that call. *Id.* at 6 & 19. In the files created by eBC or Logic, PACs are included for calls on which they are used. *Id.* For calls made without using PACs, the data file includes a null value in the PAC field. *Id.*

In the eBC product, eBC Back Office uses the CDR information to create .TXT files. Dkt. No. 892 at 4 & 6. The .TXT files include a collection of all billing records for a given customer. Information on the .TXT files mirrors that contained in the individual

CDRs. Dkt. No. 881 at 6 & 19. For delivery to customers, the .TXT files are combined with .FMT files, which are manually created by Qwest personnel. Dkt. No. 892 at 4 & 6. The .FMT files, along with aspects of the eBC customer portal, provide the schema for organizing the .TXT files. Dkt. No. 873-4 at 4. All customers receiving billing data through eBC receive the same .FMT files. *Id.* In order to use the billing data in the eBC client application software, a customer must receive both the relevant .TXT and .FMT files. *Id.*

The billing information, sent to the requesting customer as a .zip file, includes the relevant .TXT and .FMT files configured for use in the eBC client application. See *generally* Dkt. No. 873-8. Qwest does not require that customers receiving this billing information use the eBC client application, and the files may be used in third party applications. Dkt. No. 884 at 13 & 8. Requesting customers receive their billing information at the end of each billing cycle. Dkt. No. 872-10 at 12.

The On-Demand feature was developed by Qwest in 2002. Dkt. No. 881 at 7 ¶ 22. It is not available for users of the Logic product. *Id.* Using the On-Demand feature of the eBC product customers can request billing information for a particular previous time period. Dkt. No. 881 at 8 & 23. Further, Qwest has provided customization of the data provided to some eBC customers, which generally is comprised of additional fields. *Id.* at 8 ¶ 26.

C. PROCEDURAL HISTORY

On January 12, 2004, Centillion brought suit against Qwest in this Court. Dkt. No. 1. On February 14, 2005, the suit was consolidated with a related suit by Qwest against

Centillion, originally filed in the United States District Court for the Western District of Washington and transferred to this Court, seeking a declaratory judgment of non-infringement or invalidity of the '270 Patent. See Dkt. No. 174.

On January 9, 2008, following briefing and argument, the Court issued its Order on Claim Construction (*Markman* Order). The Court construed the disputed claim terms as follows:

CLAIM TERM	CONSTRUCTION
Aactual cost ^e	not a claim limitation
Aexact charges actually billed ^e	the rated cost assigned to each individual transaction record
Ameans for storing ^e	a device capable of receiving, retaining, and supplying data
Adata processing means ^e	<p>functions: (1) generating preprocessed summary reports; and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means</p> <p>structure: a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data, and its equivalents</p>
Aas specified by the user ^e	the service customer selects, or makes specific, the character of
Ameans for transferring ^e	<p>functions: (1) transferring at least part of said individual transaction records from said storage means to said data processing means; and (2) transferring said individual transaction records including said summary reports to said personal computing data processing means</p> <p>structure: magnetic tape, disk, or data communication lines, or their equivalents</p>

Additional processing ^o	more action upon or further manipulating
Individual transaction records ^o	records of discrete events

Dkt. No. 394 at 46.

On October 29, 2009, based on the claim construction set forth in the *Markman* Order and extensive briefing from the parties, the Court issued its Amended Order on summary judgment. See generally Dkt. No. 828. The Court concluded that the '270 Patent is valid, having not been rendered obvious by previously issued patents. *Id.* at 31. The Court further concluded that Qwest was not liable for direct infringement because it neither operated all potentially infringing aspects of the Accused Products nor directed its customers to use the Accused Products in an infringing manner. *Id.* at 34. Because it concluded that there was no underlying act of direct infringement, the Court concluded that Qwest could not be held liable for indirect infringement. *Id.*

Centillion appealed the Court's conclusion of non-infringement to the Federal Circuit. Dkt. No. 852 at 3. On May 2, 2011, the Federal Circuit issued an Order vacating in part, reversing in part, and remanding the case back to this Court. See generally *Centillion*, 631 F.3d 1279. The Federal Circuit concluded that Qwest did not engage in direct infringement. *Id.* at 1286. However, it further concluded that the standard operation of the Accused Products by Qwest's customers constitutes a use^o for a direct infringement analysis, although it acknowledged that the use^o determination was not a complete finding of infringement, as no comparison of the Accused Products and the claim limitations had occurred. *Id.* at 1285. It remanded the case to this Court for a determination as to whether Qwest could be held liable for indirect infringement based on its customers' use of the Accused Products. *Id.* at 1286.

Following remand, the parties filed the present Motions. Centillion requests a finding that Qwest indirectly infringed Claims 1 and 8 of the '270 Patent by providing the eBC application to customers and instructing them as to its use in an infringing manner. Dkt. No. 872 at 41. Qwest requests a finding of non-infringement as to the entirety of the '270 Patent, contending that the Accused Products do not meet all the claim limitations of the '270 Patent and, alternatively, Qwest did not have the requisite *mens rea* for indirect infringement. Dkt. No. 884 at 6B7. Since filing the Motions, the parties have filed a number of supplemental materials. See generally Dkt. Nos. 886, 889, 898, 901, 903, 905, 914B15, 920, 922B26.

The Court includes additional facts below as necessary.

II. STANDARDS

A. SUMMARY JUDGMENT

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); see also *United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267B68 (7th Cir. 1990). Motions for summary judgment are governed by Federal Rule of Civil Procedure 56(a), which provides in relevant part:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Once a party has made a properly-supported motion for summary judgment, the

opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials showing that a material fact is genuinely disputed. FED. R. CIV. P. 56(c)(1). A genuine dispute of material fact exists whenever there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.^e *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine dispute of material fact exists. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996). It is not the duty of the Court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying applicable evidence. See *Bombard v. Ft. Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996).

In evaluating a motion for summary judgment, the Court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. See *Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. See *Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. See *Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). If the moving party does not have the ultimate burden of proof on a claim, it is sufficient for the moving party to direct the court to the lack of evidence as to an element of that claim. See *Green v. Whiteco Indus., Inc.*, 17 F.3d 199, 201 & n.3 (7th Cir.

1994). If the nonmoving party fails to establish the existence of an element essential to [her] case, one on which [she] would bear the burden of proof at trial, summary judgment must be granted to the moving party.^e *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996).

B. PATENT INFRINGEMENT

Under 35 U.S.C. § 271(a), whoever without authority makes, uses, offers to sell, or sells any patented invention . . . within the United States . . . infringes the patent.^e Reviewing whether a particular device or system infringes a patent is a two-step process. See *CAE Screenplates v. Heinrich Fiedler GMBH*, 224 F.3d 1308, 1316 (Fed. Cir. 2000); *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362 (Fed. Cir. 1999). First, the Court must interpret the disputed claims, from a study of all relevant documents,^e to determine their scope and meaning. *K-2 Corp.*, 191 F.3d at 1362; see also *Dolly, Inc. v. Spalding & Evenflo Cos., Inc.*, 16 F.3d 394, 397 (Fed. Cir. 1994). Second, the Court must determine if the accused device, system, or process comes within the scope of the properly construed claims, either literally or by a substantial equivalent. See *K-2 Corp.*, 191 F.3d at 1362; *Dolly*, 16 F.3d at 397; *SmithKline Diagnostics v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988). In this case, the first phase of the infringement analysis, claim construction, occurred prior to the instant Motions. See Dkt. No. 394. Therefore, the Court's analysis focuses on the second phase of the infringement analysis.

The patent owner bears the burden of proving infringement. *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1273 (Fed. Cir. 2004). The Federal Circuit has found in this case that Qwest did not engage in direct infringement, either on its own

or through vicarious liability for any infringing acts by its customers. See *Centillion*, 631 F.3d at 1286. The present Motions, therefore, address indirect infringement only. There are two types of indirect infringement: contributory infringement and inducement to infringe. Both types of indirect infringement require an underlying act of direct infringement. *Akamai Techs., Inc. v. Limelight Networks, Inc.*, Nos. 2009-1372, -1380, -1416B17, 2012 WL 3764695, at *4 (Fed. Cir. Aug. 31, 2012) (per curiam) (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341 (1961); *Henry v. A.B. Dick Co.*, 224 U.S. 1, 12 (1912)).

III. DISCUSSION

As an initial matter, the parties disagree as to whether Centillion previously conceded that Qwest's customers must use Qwest's client software to directly infringe, as opposed to inputting data received from Qwest into a third-party application with similar functionality. In its opinion, the Federal Circuit noted in dicta that Centillion concedes that in order to infringe, the customer must install Qwest's client software. *Centillion*, 631 F.3d at 1286n.2. Centillion contends that it made no such concession and maintains that infringement may be found even if customers process records sent from Qwest using a third-party application rather than Qwest's software. However, a review of Centillion's appellate brief convinces the Court that Centillion made such a concession. Dkt. No. 883-1 at 5 (A) Only if the installation of the eBill Companion client application, the downloading of call data, and its importation into the eBC client application are completed according to Qwest's step-by-step directions are the customers' personal computers

adapted to perform additional processing as set forth in the claims. Centillion may not revoke an admission made before the Court of Appeals on remand to this Court. See *United States v. Cunningham*, 405 F.3d 497, 503804 (7th Cir. 2005) (stating that a concession made in appellate brief is binding on the party). Therefore, the Court limits Centillion's claims to customers purportedly using Qwest's application, rather than a third-party application, to process records and proceeds accordingly.

A. DIRECT INFRINGEMENT

To prove direct infringement, Centillion must show by a preponderance of the evidence that every limitation of the claim asserted to be infringed has been found in the accused device, either literally or by equivalent. *Cross Med. Prods. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1310 (Fed. Cir. 2005). For terms construed as means-plus-function terms, infringement requires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification. *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 (Fed. Cir. 2006) (citing *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 324 F.3d 1308, 1320 (Fed. Cir. 2003)). A party may prove direct infringement by circumstantial evidence. *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1326 (Fed. Cir. 2009).

As the parties agree, and the Federal Circuit concluded, that Qwest did not directly infringe the '270 Patent, Centillion must show that direct infringement occurred through

Qwest's customers' use of the Accused Products.² The Federal Circuit concluded that Qwest's customers' use of the Accused Products as a matter of law, but the Court noted that this finding did not conclude the direct infringement inquiry. *Centillion*, 631 F.3d at 1285B86. The Court must still determine whether the Accused Products meet all limitations of the claim terms. *Cross Med. Prods.*, 424 F.3d at 1310. In this type of direct infringement analysis, where the steps allegedly constituting infringement are performed sequentially by numerous non-related actors, rather than a single company or actor, it must be shown that the Accused Products meet all the claim limitations when fully operated and that the Accused Products were indeed operated as such. *Cf. Akamai Techs.*, 2012 WL 3764695, at *4B*5.

1. CLAIM 1

The parties agree that the Accused Products encompass all of the following elements of Claim 1:

A system for presenting information concerning the actual cost of a service

² In one of its supplemental authority submissions, Centillion contends that the Federal Circuit en banc decision in *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2012 WL 3764695 (Fed. Cir. Aug. 31, 2012) (per curiam), undermines the Federal Circuit's previous statement in this litigation that Qwest does not "make" the patented invention . . . as a matter of law. See *Centillion*, 631 F.3d at 1288. Centillion argues that it should be permitted to argue that Qwest is a direct infringer through "making" the patented invention. See generally Dkt. No. 922.

Having reviewed *Akamai* and the Federal Circuit's decision in this case, the Court concludes that *Akamai* does not require reevaluation of the Federal Circuit's finding. *Akamai* states that "the party that adds the final element to the combination 'makes' the infringing product and is thus liable for direct infringement even if others make portions of the product." 2012 WL 3764695, at *11. In this case, there is little doubt that Qwest's customers complete the system by installing and using the Accused Products on their PCs. In other words, the final element is added by the customer, not Qwest. *Akamai* does not control clearly enough to justify deviation from the Federal Circuit's clear statement that Qwest is not a direct infringer under either the "use" or "make" standard. See *Centillion*, 631 F.3d at 1288.

Although Qwest still may be held liable as an indirect infringer if Qwest's customers are found to be direct infringers and other legal criteria are met, the Federal Circuit's decision as to Qwest's status as a direct infringer is the law of the case and will be upheld as such.

provided to a user by a service provider, said system comprising:

storage means for storing individual transaction records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction records from said storage means to said data processing means;

....

means for transferring said individual transaction records . . . from said data processing means to said personal computer data processing means

>270 Patent col.31 ll. 39B55, 63B66. In other words, elements one, two, three, and four of Claim 1, as well as a portion of element six, are present in the Accused Products. See generally Dkt. No. 872; see also Dkt. No. 889 at 9.

However, Qwest contends that neither Logic nor eBC contain the other elements of Claim 1. Specifically, Qwest contends that Centillion has not proven that any of Qwest's customers use either Logic or eBC in a manner that satisfies the Aas specified by the user limitation of element five of Claim 1. See >270 Patent col.31 l.57. In addition, Qwest contends that the data processing means of the Accused Products do not generate Asummary reports,@ Acreate database tables,@ Aedit data,@ or Asegregate data . . . by record type@ as required by elements five, six, and seven, see *id.* at col.31 ll. 57, 64; col.32 l. 3, as well as the Court's construction of the means-plus-function limitations of the Adata processing means@ term. See Dkt. No. 394 at 31. The Court addresses these contentions in turn.

a. *As specified by the user*

The fifth element of Claim 1 requires Asaid data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means[.] 270 Patent col.31 ll. 56B62. In the *Markman* Order, the Court construed *As specified by the user* to mean *the service the customer selects, or makes specific, the character of.* Dkt. No. 394 at 34. Centillion contends that both Logic and eBC satisfy the *As specified by the user* limitation through the use of PACs and that eBC's On-Demand functionality, as well as customizations to the .TXT files made in response to requests by particular customers also satisfy this limitation.

The Court concludes that inclusion of PACs in customer's billing information does not meet the *As specified by the user* limitation of the fifth element of Claim 1. Qwest's customers' use of PACs is configured completely outside of the Logic or eBC application framework, and PACs may be used by customers regardless of whether they analyze billing records with Logic, eBC, with a third-party application, or not at all. Dkt. No. 881 at 7 & 20. Customers may enter a PAC when placing a call, but they are not required to do so, and a section for PACs is included in the billing information provided by Qwest in conjunction with Logic or eBC even if customers choose not to enter a PAC. Dkt. No. 891-2 at 15B16. Inclusion of PACs in the billing information generated by Qwest is no different than inclusion of the telephone number dialed, a mere piece of data, and there is little doubt that dialing a particular telephone number does not satisfy the *As specified by*

the user® limitation. In short, the Court concludes that use of PACs does not meet the Aas specified by the user® limitation and, as such, the Logic product does not infringe Claim 1 of the '270 Patent.

In addition, the Court concludes Qwest's customization of eBC data files for particular customers does not satisfy the Aas specified by the user® limitation. Centillion contends that changes made to the .TXT files in response to customer feedback, such as from Wells Fargo, meet the Aas specified by the user® limitation. However, Centillion concedes that customers who have had their data files customized cannot use the eBC client application software. Dkt. No. 884 at 19 (Statement of Material Facts Not in Dispute ¶ 37 ("SMFND ¶ 37")); Dkt. No. 886 at 13n.10 (stating that Centillion does not dispute Qwest's SMFND ¶ 37, among others). As discussed above, Centillion has already conceded that infringement requires use of the eBC client application software. Therefore, the Court concludes that any Acustomization® of eBC data files alleged by Centillion does not meet the Aas specified by the user® limitation of Claim 1.

However, the Court concludes that use of eBC's On-Demand feature does meet the Aas specified by the user® limitation. On-Demand allows a customer to submit a request to receive billing information for a particular previous billing cycle. Dkt. No. 881 at 7 & 22. In doing this, the customer Aselects . . . the character of® the information being provided, specifying that the information cover only a particular time period. Qwest argues that because the time period selected is limited by billing cycleCin other words, a customer cannot request just any time period, but instead the time period requested must correspond to a billing cycleCthe Aas specified by the user® limitation is not met. However, Aas specified by the user® does not require as much flexibility as Qwest would

like, and it is sufficient that the customer may select a subset of available time ranges, even if that selection must correspond to a particular billing cycle.

Having determined that use of the On-Demand feature meets the Aas specified by the user[®] limitation, the Court still must determine what evidence is necessary to show this element. Qwest contends that Centillion must bring forth evidence of specific customers that specified the character of the data and reports they were receiving, above and beyond evidence that the On-Demand feature provides the capacity to allow customers to make those selections. Centillion contends that the Court's claim construction of Adata processing means[®] in conjunction with Aas specified by the user[®] renders the limitation one of capability, not actual operability.

Examining the language of the claims, the Court concludes that mere capacity is insufficient. The fifth element of Claim 1 speaks of a Adata processing means generating . . . reports as specified by the user,[®] language that speaks of the data processing means taking some sort of action to bring the reports into existence. However, Qwest's contention that Centillion must bring forth evidence such as customer deposition testimony of use of the On-Demand feature asks too much, as Centillion may prove that the feature was used through circumstantial evidence. *Vita-Mix Corp.*, 581 F.3d at 1326. Reviewing the evidence, the Court concludes a genuine dispute of material fact exists as to whether at least one of Qwest's customers used the On Demand feature. For instance, Nick Bates of MedQuist, Inc. sent a complaint to Qwest's help desk stating, I am trying to download On-Demand files, I receive the emails that state that they are completed, but they do not appear on the website for me. A co-worker of mine has no problem with this feature.[®] Dkt. No. 886-9 at 3. Contrary to Qwest's argument, this is

more than the descriptions in the user's manual found insufficient by the Federal Circuit in *Mirror Worlds*. See *Mirror Worlds, LLC v. Apple, Inc.*, No. 2011-1392, 2012 WL 3800812, at *8B*9 (Fed. Cir. Sept. 4, 2012). The Court concludes that use of eBC's On-Demand feature meets the "as specified by the user" limitation of Claim 1 and that there is a factual dispute as to whether Qwest's customers actively used the feature.

b. Means-plus-function construal of "data processing means"

Qwest contends that eBC does not have a "data processing means" as that term was construed in the *Markman* Order.³ Centillion contends that eBC Back Office, LATIS, or a combination thereof is a "data processing means" as defined by the Court. The Court construed "data processing means" as a means-plus-function term under 35 U.S.C. § 112, & 6. Specifically, the Court concluded that a data processing means performs the functions of (1) generating preprocessed summary reports and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer. Dkt. No. 394 at 31. The structure corresponding to these functions was construed as "a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data into a PC-compatible format and its equivalents." *Id.* As noted above, infringement of a means-plus-function term requires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the

³ The Court has concluded that the Logic product does not contain the "as specified by the user" limitation of Claim 1, therefore, it will not address the other limitations of that claim with respect to the Logic product.

corresponding structure in the specification.⁶ *Applied Med. Res. Corp.*, 448 F.3d at 1333. Equivalence in structure may be proven by showing that [] two [structures] perform the identical function in substantially the same way, with substantially the same result.⁶ *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1364 (Fed. Cir. 2000).

Examining the required functions of the data processing means, the Court concludes that the eBC Back Office and LATIS, or a combination thereof, generates preprocessed summary reports as required by the claims. In the *Markman* Order, the Court defined a summary report⁶ as a collection of analyzed and/or reorganized data.⁶ Dkt. No. 394 at 41. The Court left open the possibility that a report including all billing information for a particular customer would constitute a summary report and did not place any limitation on the format of the summary report. *Id.* The eBC Back Office organizes the billing information by customer and inserts that information into various .TXT files, although viewing of these .TXT files requires additional .FMT files constructed by Qwest personnel outside of the eBC framework. Dkt. No. 892 at 4 & 6. These .TXT files, even apart from the .FMT files, are sufficient to constitute summary reports as that term has been construed, as they include a collection of . . . reorganized data.⁶ Centillion has brought forth evidence that at least some of Qwest's customers receive their billing information and use it in eBCC in other words, at least some of Qwest's customers receive the .TXT files, preprocessed summary reports. See, e.g., Dkt. No. 872 at 18 & 27. Therefore, the Court concludes that eBC Back Office generates a preprocessed summary report.

Turning to the other required function of the data processing means, however, the Court concludes that eBC Back Office, LATIS, or a combination thereof, does not

Aorganiz[e] said summary reports into a format for storage manipulation and display on a personal computer data processing means.⁶ See Dkt. No. 394 at 31. Although LATIS and eBC Back Office perform the steps necessary to create a summary reportCthe relevant .TXT fileCneither of those systems organize the summary reports into a format for display on a personal computer. Instead, the customer must be provided with a .FMT file and schema within the eBC client application to interact with the .TXT file and allow display of the summary reports on a personal computer. Dkt. No. 892 at 4 & 6. The .FMT file is generated by Qwest personnel apart from either LATIS or eBC Back Office. *Id.* Neither LATIS nor eBC Back OfficeCthe alleged data processing meansCperforms the steps necessary to format the .TXT file for display. Because Centillion has not brought forth evidence that the so-called data processing means Aorganiz[e] . . . summary reports into a format for . . . display,⁶ the Court concludes that eBC fails to perform a required function of the data processing means and, therefore, fails to meet all limitations of Claim 1.

As noted above, direct infringement requires that every limitation of the claim asserted to be infringed has been found in the accused device, either literally or by equivalent. *Cross Med. Prods.*, 424 F.3d at 1310. For means-plus-function limitations, the relevant structure must Aperform the identical function recited in the claim.⁶ *Applied Med. Res. Corp.*, 448 F.3d at 1333. Because the Court concludes that the data processing means of eBC does not perform all required functions set forth in the limitations of Claim 1, the Court concludes that eBC does not infringe Claim 1 of the 270 Patent.

2. CLAIM 8

Claim 8 tracks Claim 1 specifying operation by Atelecommunications service providers[®] and involving Atelecommunication usage records.[®] See generally [>]270 Patent col.32 ll. 30B46. As the parties do not dispute that Qwest is a Atelecommunications service provider[®] and any records distributed by Qwest are Atelecommunication usage records,[®] the direct infringement analysis for Claim 8 is identical to the analysis for Claim 1. See *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1371 (Fed. Cir. 2003) (requiring identical construction of identical claim terms). Because, as discussed above, neither Logic nor eBC infringe all the limitations of Claim 1, and the relevant limitations of Claim 8 contain identical claim terms, the Court concludes that Logic and eBC do not infringe Claim 8 of the [>]270 Patent.⁴

B. INDIRECT INFRINGEMENT

In order for Qwest to be held liable for indirect infringement (either contributory infringement or inducement of infringement) an underlying act of direct infringement, in this case committed by Qwest's customers, must be shown. *Akamai Techs., Nos.* 2009-1372, 1380, 1416B17, 2012 WL 3764695, at *4 (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341 (1961); *Henry v. A.B. Dick Co.*, 224 U.S. 1, 12 (1912)); see also *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1364 (Fed. Cir. 2012). As discussed

⁴ As Claims 10 and 46 of the [>]270 Patent are dependent claims based on Claim 8, the Court concludes that Logic and eBC do not infringe those Claims either. Likewise, having concluded that neither Logic nor eBC infringe any of the asserted claims, the Court also concludes that, as a functional equivalent of either of those products, Insite also does not infringe the asserted claims.

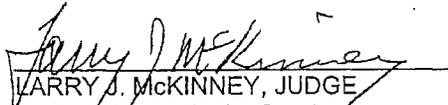
above, the Accused Products fail to satisfy all claim limitations of the >270 Patent and, therefore, no direct infringement has occurred. Consequently, Qwest cannot be held liable for indirect infringement⁵ and is entitled to summary judgment.

IV. CONCLUSION

For the reasons set forth herein, the Court rules as follows:

- 1) Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings) Inc.-s Motion for Partial Summary Judgment of Infringement [Dkt. No. 871] is **DENIED**.
- 2) Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation-s Motion for Summary Judgment of Non-Infringement [Dkt. No. 880] is **GRANTED**.
- 3) Plaintiffs Centillion Data Systems, LLC-s and CTI Group (Holdings), Inc.-s Request for Oral Argument on Their Motion for Partial Summary Judgment of Infringement [Dkt. No. 879] is **DENIED**.
- 4) Qwest's Motion for Leave to File a Sur-Reply to Centillion's Reply in Support of Its Notice of Supplemental Authority [Dkt. No. 918] is **DENIED**.
- 5) Centillion-s Renewed Motion for Oral Argument on Motions for Summary Judgment [Dkt. No. 921] is **DENIED**.

IT IS SO ORDERED this 15th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distribution attached.

⁵ Because Centillion has not shown that direct infringement has occurred, the Court declines to address whether Qwest had the requisite *mens rea* to indirectly infringe the >270 Patent.

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EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff)	
)	
vs.)	
	)	1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	

QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
	)	1:04-cv-2076
vs.	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC)	
and CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

ORDER

Defendants Qwest Corporation and Qwest Communications International, Inc. and Consolidated Plaintiff, Qwest Communications Corporation (collectively "Qwest") have moved for an amendment of the Entry of Judgment entered in this cause on October 15, 2012, to add language to reserve to Qwest its invalidity defenses in case this cause returns to this Court for further consideration. The Court sees no just reason to deny this motion.

Further, Qwest also requests that the Court reconsider its Order denying Qwest its costs as set forth in its Bill of Costs filed November 17, 2009, Dkt. No. 830. See Dkt. No. 932. The Court concludes that it misapprehended the discretion allowed by Rule 54(d)(1) of the Federal Rules of Civil Procedure ("Rule 54(d)(1)") as set forth in Seventh

Circuit precedent concluding that it is incumbent upon the unsuccessful party to show that the prevailing party should be penalized by a denial of costs. See e.g. *Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co.*, 854 F.2d 219, 221-22 (7th Cir. 1988) (concluding that the district court's discretion in awarding costs is narrowly confined by misconduct of the prevailing party or an inability of the losing party to pay) (citing, *inter alia* *Popell Bros., Inc. v. Schick Elec., Inc.*, 516 F.2d 772, 774-75 (7th Cir. 1975)). No such showing has been made by Plaintiff Centillion Data Systems, LLC.

Qwest's Motion to Amend Entry of Judgment dated October 15, 2012 (Dkt. No. 931), is **GRANTED**. In addition, Qwest's Motion to Reconsider (Dkt. No. 932) is also **GRANTED**. An amended Judgment shall be entered accordingly.

IT IS SO ORDERED this 30th day of October, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distributed to all attorneys of record via CM/ECF.

EXHIBIT D

A5164

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
Plaintiff,)
)
vs.) 1:04-cv-0073-LJM-DKL
)
QWEST COMMUNICATIONS)
INTERNATIONAL, INC. and QWEST)
CORPORATION,)
Defendants.)

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,)
Consolidated Plaintiffs,)
) 1:04-cv-2076
vs.) (consolidated with above)
)
CENTILLION DATA SYSTEMS, LLC)
and CTI GROUP (HOLDINGS), INC.,)
Consolidated Defendants.)

ORDER ON PLAINTIFF'S MOTION TO RECONSIDER

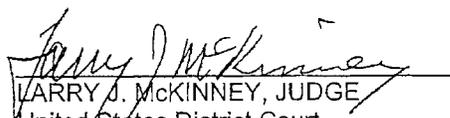
The Court entered judgment in favor of Defendants Qwest Communications International, Inc. and Qwest Corporation (collectively "Qwest") and against Plaintiff Centillion Data Systems, Inc. ("Centillion") on October 15, 2012. In that order the Court stated that both parties were to bear their own costs. Qwest then asked the Court to reconsider the costs ruling. The Court did reconsider and amended the Judgment to include the requested costs. Centillion has responded to the Court's amended order by filing a Motion to Reconsider of its own. Centillion points out that this Court did not give it time to respond to Qwest's Reconsideration Motion and challenges Qwest's request for costs. The Court agrees with Centillion that it should reconsider the entry of costs in light of Centillion's objections.

Having considered Centillion's objections, the Court now finds against Centillion and reaffirms its decision accessing costs. It is undisputed that Qwest is the prevailing party and is entitled to costs. The costs previously entered are not unreasonable. It remains the Court's view that the photo copying request is both reasonable and recoverable. Qwest's position that the copies were necessary to litigate its case is supported by its proffered breakdown. This case has been pending for nine years. To say that it has been paper intensive is an understatement.

Qwest's request for costs associated with depositions is likewise supported by its filings. Qwest's position that the billed depositions were necessary to the case is well founded. In short, while the Court issued its order on costs without giving Centillion a chance to challenge the request, the Court finds the challenge insufficient to require a change of its prior order.

Centillion's Motion to Reconsider is **GRANTED in part and DENIED in part**: To the extent the Motion asks the Court to review its prior entry in light of Centillion's arguments, the Motion is **GRANTED**; to the extent the Motion seeks an amendment to the Court's order on costs, the Motion is **DENIED**.

IT IS SO ORDERED this 20th day of November, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

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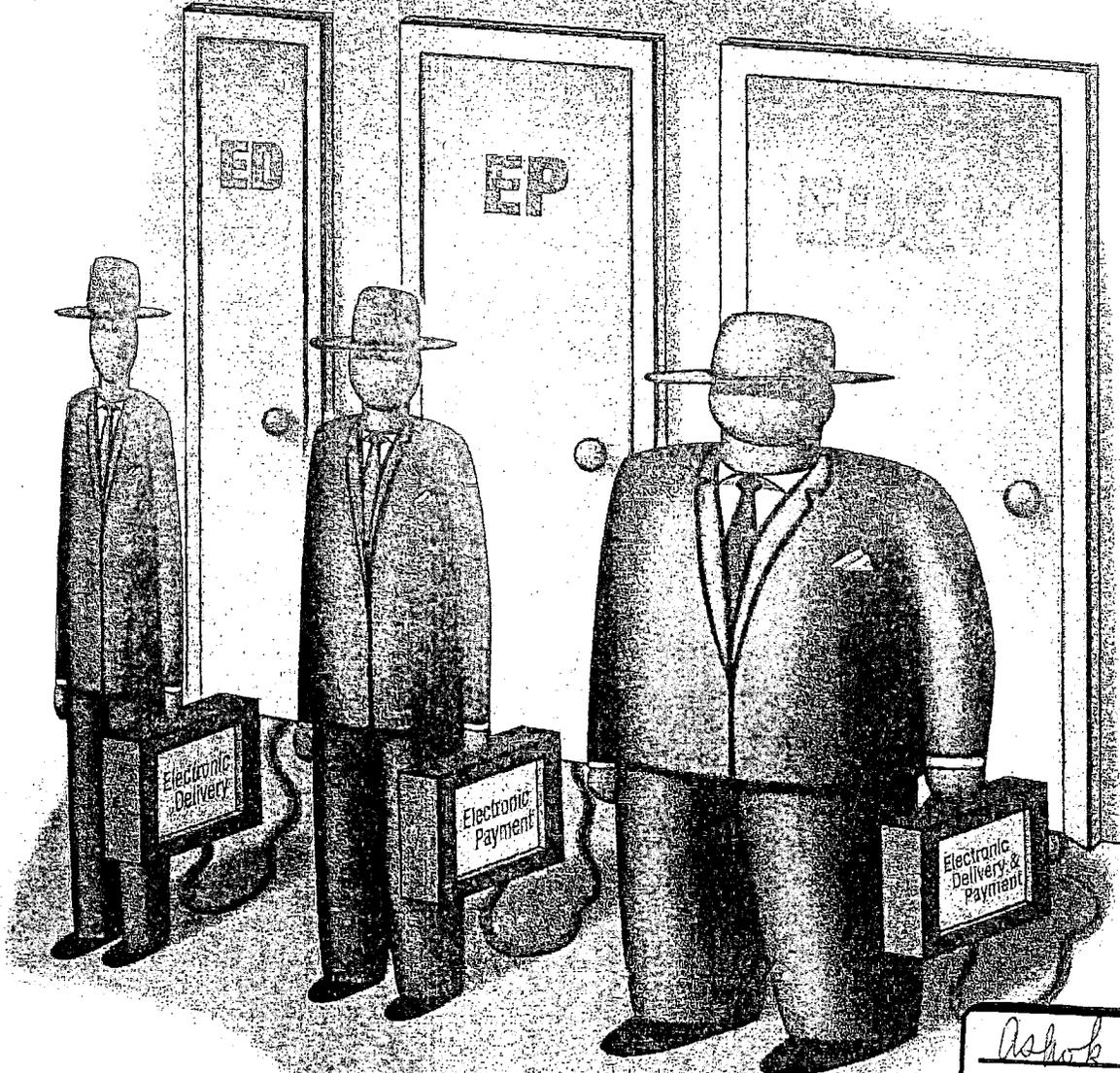
August 2000

invoicing & payment on the internet

Identifying & Understanding the Target

Telco & Financial Services Are Fastest US Implementers

RB Publishing Inc.
2424 American Lane
Madison WI 53704



Ashok
EXHIBIT NO. 23
S. TERRY 11-20-08

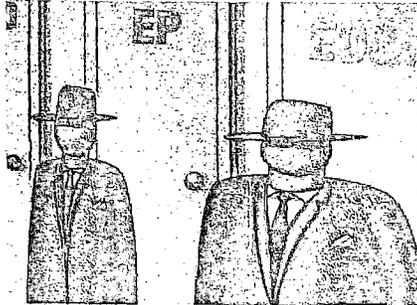
PRSRT STD
U.S. POSTAGE
PAID
PERMIT NO. 1
RANDOM LAKE, WI

E.bill for Everyone
Today's Technology Supports
More than Billing

Qwest Implements E.bill
Solution in Record Time

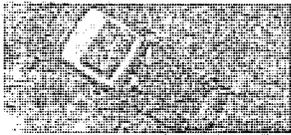
e.bill Contents

august 2000
volume 2 issue 4
www.ebillmag.com



Feature 26 E.bill for Everyone

Today's electronic bill presentation and payment technology supports much more than billing. Users are finding a variety of uses for the technology, ranging from margin call notices for brokerage firms that have the ability to trigger funds or stock movement to frequent flyer mileage statements that can be sent out with a list of items that could be purchased.



Insider Perspective

12 Identifying and Understanding the Target

Analyst James Van Dyke offers his insight on how telco and financial services are the fastest market segments to implement e.bill solutions, while utilities and other industries place less value on the technology and are implementing at much slower rates.

14 E.bill to Take Off Around World EBPP market expected to ramp steeply after 2003

16 To Aggregate or Consolidate? Aggregator access to customer data leaves some uneasy

16 What's Happening Wireless? Consumers look for wireless email options

18 Time to Pay the Bills Late fees and forgotten payments add up for consumers



Going Live

32 Qwest Implements E.bill Solution in Record Time

As an early implementer of e.bill technology in 1998, Qwest Communications enabled its EBPP solution in just 12 months, six months earlier than anticipated. Greg Stephan, director of Customer Financial Services, walks us through Qwest's implementation process, sharing his challenges and accomplishments.

36 Natural Partners Consolidation and Comparison

38 Change Comes from Within E.bill simplifies dreaded task

Departments

6 from e.gooding 8 new at e.bill magazine 20 e.bill reports 42 e.bill directory

going

This issue, we include details on how Qwest Communications and First Tech Credit Union are facing their electronic challenges to improve customer service.

Qwest Implements E-bill Solution in Record Time

Common data source provides input for billing

In the fall of 1998, Qwest Communications International, a leader in secure, broadband Internet-based data, voice and image communications for businesses and consumers, set out to improve its customer billing information. The company analyzed its existing billing system with an approach in mind: implement and then leverage one "data" solution that could provide "complete" billing information via many different billing channels via both traditional means and the Internet. Leveraging the same "data" solution across traditional billing channels, as well as emerging channels (e.g. XML, iFX/OFX, WML, EDI), would save Qwest time and money.

As part of a project to redesign its paper invoices, Qwest developed and implemented a process that extracted and compiled all of its billing information into a common data source (single format and source regardless of customer type or content) that could be used by multiple billing channels and applications.

Today, Qwest uses this "common data source" as the input to create both its paper and electronic bills. The paper bills are created via a formatting software package, which has been customized and integrated into the billing stream. The electronic

bills are created using custom software developed by Qwest, which creates HTML bills for delivery to the Web.

Qwest Communications International is now poised in the market to offer customers billing information in new formats, such as Wireless Markup Language (WML), as a result of this custom electronic billing software.

Build It and They Will Come

Although electronic bills had not been widely adopted, in November of 1998, making a business case for e-billing was easy. Strategically, Qwest felt its ability to offer electronic billing and account maintenance would allow it to differentiate itself from other telecom providers. Qwest further envisioned this feature would eventually become a "table stake" within any telecom service offering. Using conservative numbers for adoption rates, Qwest anticipated the project would pay for itself in less than 18 months.

"The majority of the companies entering the e-space today take an inward-looking approach to e-billing," comments Greg Dupier, one of the project's team leaders. "E-billing projects are often driven by

By
Greg
Stephan

one functional area, such as customer service, trying to lower its call volumes or operations wanting to reduce its paper and printing costs, rather than focusing on the customer's needs."

Qwest approached the project from a different angle. "We realized that any solution must benefit both the internal group as well as the customer. By adding value to the customer's experience through customizing reporting, making it easy to enroll and presenting call detail in a variety of ways, we anticipated customers would sign up for e-billing and our costs would naturally decline. Furthermore, Qwest as a high-tech company attracts and retains technically savvy customers. These customers want to work with us online," Dupier adds.

Getting Started

Qwest's goal was to make electronic billing as simple, helpful and convenient for its customers as possible. But billing is not a stand-alone function, so the project team "solicited input from every area — marketing, customer service, billing operations, IT, collections, accounts receivables and print operations," explains Alex Robertson, another of the project's team leaders. The benefits of this feedback were two-fold. "Everyone took ownership of the project, which was critical for us to meet our schedule, and we were able to create a system and processes that met the needs of the entire organization," Robertson notes.

High on the list of business requirements was the need to present information in a way that customers find useful. The system needed to be extremely flexible to support Qwest's many different types of customers: consumer (residential), commercial and wholesale. Not only does the content and "look and feel" of the bill vary by customer type, but the system also needed to format the bill to present call details as the customer requested. This meant supporting multiple reporting levels within a single bill and the ability to deliver customized content based on the billing data or information about the customer.

Time to market was another chief concern. Qwest rapidly adds new products and services to its offerings, and it needed the ability to roll those out quickly to maintain a competitive advantage. In addition to putting new content on the bill, Qwest needed to include the ability to provide targeted messaging on all bills, regardless of format, to communicate with the customer.

Qwest couples significant scalability and performance requirements with its functional requirements. The system had to be able to produce 15 million bills a month as well as create a single bill of at least 175,000 (paper) pages in HTML. The system needed to accommodate expansion while maintaining a response time of less than 10 seconds (even for the largest bills). Clearly, an entire 100,000+-page bill cannot be delivered at once. The system needed to provide navigation and access to any part of the bill, while presenting only workable pieces to the customer at any one time. This allows the customer to view bill detail without having to wait for oversized pages to load.

Shopping Around

Qwest evaluated many of the major electronic bill presentment and payment (EBPP) vendors. Some offered functional richness, such as the ability to deliver dynamic, customized content; others could meet its performance requirements, but no system matched up to all the requirements. The evaluation team could not find an example of an implementation in production with a bill the size of Qwest's wholesale bill (175,000 pages) and sub 10-second response time.

"At the time, most implementations presented just a bill summary to its larger customers," says Chris Box. "When we started requesting references of similar implementations, we found most projects had taken over a year to implement, and the average project team consisted of 15 to 16 full-time employees." By contrast, the Qwest project team averaged five to seven people, and electronic bills for each customer type were implemented in less than a year.

Many of the EBPP products included complete extranet functionality, offering customer care, payment and registration/enrollment in a single solution. As a result, many of the formatting requirements were left to the company purchasing the software to develop. For example, when Qwest asked whether

The screenshot shows the 'Qwest Control' web interface. At the top, there are navigation tabs for 'BILLING', 'ACCOUNTS', 'PAYMENTS', and 'MORE SERVICES'. Below this is a 'Choose Options' section with a list of links: 'Home', 'Pay Your Bill', 'Manage Your Account', 'Account Info', 'Pay By Mail', 'Mobile Access', 'Select Billing Defaults', 'Change Billing Cycle', 'Print Bills', 'Manage My Reports', and 'Manage My Billing'. To the right, a welcome message reads: 'Welcome to Qwest's electronic invoice and billing administrator.' It lists account details for 'COLD INC.' (Account Number: 19191919, Type: Standalone, Invoice: eBill, Payment: ACH). Below the message, there are instructions: 'In order to provide our customers with a convenient and secure way to manage your accounts with Qwest, we have developed online tools to help you make electronic payments, select various invoice options, and update your account information online.' and 'To begin, click on one of the choices on the left hand side of the screen.' A final note says: 'If you would like more information about each of the options, simply hold your pointer over an option and a brief description will appear.'

The screenshot shows the 'Login' page of the Qwest Control web interface. It features a login form with fields for 'Amounts', 'User ID', and 'Password', and a 'Login' button. To the right, a text box describes the tool: 'This powerful tool allows you to manage your communications services efficiently and effectively through your Web browser. Qwest Control is available for the following services: • Billing, • Frame Relay, • Asynchronous Transfer Mode (ATM), • Network Dedicated Internet Access (NDIA), • Dedicated Web Hosting (DWH), • Virtual Network Services (VNS), • Toll-free (800)'. Below the form, there are sections for 'For a demo, click here', 'Save Time' (listing benefits like accessible network management tools and no need for dedicated network management workstation), 'Get Easy Access' (listing benefits like access from any location and built-in security features), and 'Resolve Trouble Quickly' (listing benefits like identifying network concerns sooner and submitting trouble tickets).

a product could sort the call details dynamically, it was told, "Sure, you can write your own code to do that!"

An Elegant Solution to a Vexing Problem

Having collected the requirements, the project team began to build internet bill presentment software that would interface with Qwest's current billing system. Qwest chose to implement a reusable solution that could be used across the company. By using some of the latest technologies and software languages, Qwest was able to implement e-billing objects that could be used by a variety of internal and external customers and applications (for example, the same Java servlet is used by both internal and external applications to display billing information).

going

"Data extraction and storage were one of the biggest hurdles we faced when evaluating EBPP vendors," says Dupier. "Many of the packaged EBPP products use a normalized database approach. This can present obstacles for a large company like ours. First, you must be careful when defining the data model or you sacrifice performance. Second, whenever you introduce changes as a result of new products, you have to re-model the data to prevent performance problems and that can significantly increase your time to market.

"We created one extract file as a source for both our paper bills formatter and for IIF [Internet Invoice Formatter], our e.bill formatting software," adds Dupier. Qwest credits this approach to achieving its performance objectives. The same common data source gives Qwest the flexibility to create other billing formats such as EDI, XML, OFX and IFX as well.



View a previous bill :
Bill Summary [icon] [icon] Select month [dropdown]

Rob B. Rob Account 361361361
200 Shanter Ln Phone 555-665-1695
Olympia, IL 60461 Billing Date Jun 7, 2000

How to reach us -- Visit our web site at www.qwest.com or call customer service at 1-800-860-2255.

Credit Card Charge Amount

The amount due has been charged to your credit card, please do not remit payment. Thank you for choosing Qwest Communications Services.

Get free email with Qwest. Simply point your browser to www.qwest.net and sign up for your free Qwestmail account today. What's more, with Qwestmail you will automatically be enrolled into Qwest's online referral program - E-referral. See website for details.

Previous Charges	\$11.95
Payment Received - Thank You	-41.35
Credits & Adjustments	-10.00
Current Charges	\$38.67
Long Distance Calls	42.45
Taxes & Surcharges	6.17

Depending on where you live, you may now be able to select Qwest as your local toll call carrier. Generally, a local toll call is when you have to dial 1 + the telephone number to make calls. Contact customer service to select Qwest's low, flat rates today! There are no additional monthly fees!



Chris Box at Qwest wrote the IIF software that is used by Qwest to generate its HTML bills. Qwest's e.bill formatter is object-oriented, WYSIWYG and supports nested conditional logic — if, then, else — for dynamic messaging and graphics. It also allows the bill detail — literally millions of transactions — to be formatted in a myriad of ways.

Qwest also broke the mold in deciding to produce an e.bill for everyone — not just after a customer enrolls. Again, this was driven by a need to add value to the Web-based interaction. For all of its customers across the consumer, commercial and wholesale segments, Qwest creates their bills in both AFP print format and HTML format. Thus, customers have immediate access to

their bill histories without having to go through the traditional process of enrolling for e.billing. Qwest has the capability to suppress printing of the hardcopy bills for customers who have opted to receive their bills electronically, resulting in postage and printing savings.

"We wanted our customers to have access to their historical information online without having to register for e.billing. By generating e.bills for all customers and by combining account history with custom formatting and targeted messaging, we believe we're adding value to the customer's Web experience. This has boosted customer adoption rates," comments Dupier.

Taking a Phased Approach

Based on increased demand from its residential customers, Qwest tackled the consumer bills first. Consumer bills were a logical first step because they are less complex than wholesale or commercial bills, yet represent a major portion of Qwest's billing volume, so printing and postage savings could add up quickly as well. Next, Qwest implemented the wholesale e.bill, closely followed by the commercial e.bill, as it recognized e.billing had quickly become a differentiator in winning new business in both segments.

Adopting the Consolidator Model

In an effort to provide flexible billing alternatives, Qwest also supports two Internet billing consolidator options, CheckFree and TransPoint. Through these consolidators, customers can elect to receive their e.bills at one of many financial institution portals such as their local banks, Charles Schwab, Quicken, Yahoo!, etc.

Full-service Web

E.billing is just one of many applications Qwest offers via the Internet. QwestControl allows Qwest's commercial customers access to not only e.billing but to check the status of their data networks, enter a work ticket and view reports of the traffic across the network. Having one site where customers can complete a variety of operational tasks has improved overall customer satisfaction and acceptance of an e-commerce business relationship with Qwest.

In a similar vein, consumers use Qwest.com (Qwest's home site) to update account information, initiate payments and add services as well as view their bills. Going beyond basic features, Qwest's customers can initiate faxes and conference calls online.

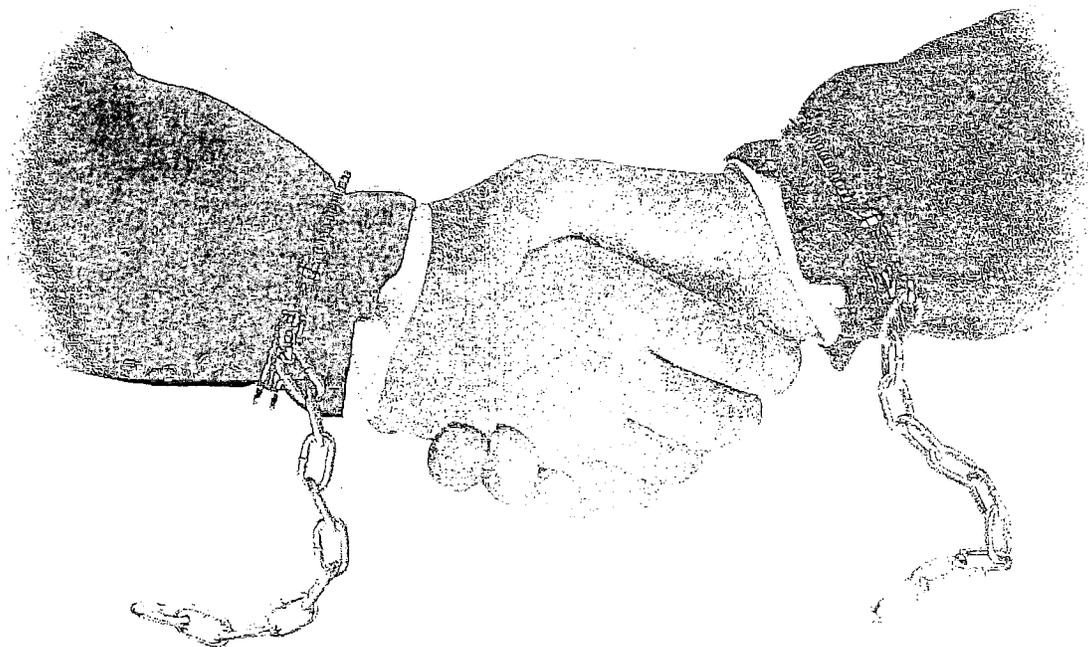
Integrating with Customer Service

What happens when a customer inquires about a bill? Qwest implemented a viewer that allows a customer service representative (CSR) to toggle between the customer's HTML bill and an image of the paper bill. When a customer has a billing question, it is important to allow the CSR to view the same version of the bill.

Getting People Enrolled

Recognizing the cost savings that come from interacting over the Internet, Qwest offers its lowest rates to customers who sign-up and bill online. Alex Robertson explains, "Customers who have a propensity to working with Qwest completely online will sign up for e.billing. These customers are our most sophisticated customers with larger spending habits. We want to attract and retain this demographic!"

Qwest utilizes targeted messaging through the traditional paper-billing channel for launching online programs to current customers.



Is your electronic
presentment and payment choice
a sentence or a solution?

Break free from limitations in electronic presentment and payment. M&I Data Services offers the only open exchange solution for electronic presentment and payment that keeps your institution where it belongs—at the center of the customer payment relationship. It integrates easily with other technologies, grows as you need it to grow, and provides customizable options—just what today's financial institutions, billers and consumers demand.

With 23 of the top 25 U.S. banks using our CSF™ document composition solution to deliver over one billion financial documents every month, you gain the confidence that

comes from an experienced partner. And major relationships with utilities, telcos and investment services help you expand your reach into more areas.

We take care of everything: setup, systems integration, even administer your e-billing service. Enjoy the freedom of choice. For more information call M&I Data Services at 1-800-236-3282, ext. 4-9240. Or visit our web site at www.midata.com.



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Through this process, Qwest is able to target specific client segments to introduce new products and online features.

A Competitive Advantage

"We're attracting many new customers based on the flexibility and robustness of our e-billing solution. For many prospective customers, it has become a requirement to access and view their bills online," says Dupier. "There's no question this has given us a competitive advantage — particularly for our commercial customers, who need the flexibility to allocate and report on billing charges and activities within their organization, for instance." Qwest's commercial customers also want to structure the billing information in a variety of ways such as by customer account codes or project codes (ideal for consulting companies, law offices, etc.). Commercial accounts also want to capture billing information to enter into internal finance and reporting systems.

The next wave of enhancements will include more self-service features for customers, such as allowing customers to schedule payments in advance, review past payment history as well as Web-based adjustments and credits. Qwest will also supply the billing data in additional formats, such as Quicken format, wireless format (WML) and as raw data for its commercial and wholesale customers.

Greg Stephan is the director of Customer Financial Services with Qwest Communications. You can reach him by phone at 703-363-3511 or via email at gregory.stephan@qwest.com.

The Qwest Initiative

Project Team Leaders:

Christopher Box, Chief Software Architect
Greg Dupier, eBilling Project Manager
Alex Robertson, Director, eBusiness Strategy
Greg Stephan, Director, Customer Financial Services

Number of People on Project:

Average of 5 to 7

Date Project Started:

Consumer e-billing initiative started November 1998, launched May 1999. Wholesale billing project started March of 1999 and launched October 1999. Commercial project started November 1999 and launched June 2000.

Percentage of Customer Base Enrolled:

Consumer: < 5% of customers enrolled
Wholesale: 15% of customers enrolled
Commercial: < 5% of customers enrolled (just launched)

Response Times:

Consumer: 1 to 2 seconds
Commercial: 1 to 3 seconds
Wholesale: 1 to 10 seconds

Natural Partners: Consolidation and Comparison

Beyond the industry, competition on the Internet can be fierce. To keep ahead of the competition, many successful companies are finding they need to reinvent themselves, widening the scope of their businesses to attract new customers and keep the interest of their existing customer bases. Successful electronic bill presentment and payment (EBPP) vendors are reinventing themselves daily. While still an emerging industry, the competition in the consolidator and portal markets is already intense. Companies are seeking new offers to stay ahead of the pack.

One opportunity that has recently gained the attention of consolidators is offering bill comparison services: providing a search engine that compares the rates you pay, on any bill, with those charged by other vendors. By providing a quick and easy way for people to find the lowest rates on their bills, bill consolidators can greatly enhance their abilities to serve customers.

The bill comparison concept is not new. Several Web sites offer bill comparison with the majority focusing on one industry; www.point.com offers rate comparisons for wireless and cellular service and products, www.insweb.com can match rates for different insurance, and for mortgage rate comparison, you can turn to www.mortgage.com. One company, Lowermybills.com, offers bill comparison for a variety of industries from Internet service to long distance.

Bill consolidators interested in offering bill comparison can do so in different capacities. The number of opportunities to partner with comparison sites will only grow with time. Presently, Lowermybills.com's Affiliate Program offers Web sites the opportunity to contain a link to its site and share in any commission generated by people who follow the link, use the service and, as a result, change service providers. However, the real benefits of the synergy between bill comparison and bill payment may come from an integrated solution that offers the two services side by side. From a usability perspective, it seems that the two services could work seamlessly together. From a marketing perspective, consolidators could leverage the proven success of bill comparison sites. According to some testimonials on Lowermybills.com's site, people saved up to \$982 a year on a single bill.

Considering the proven success of bill comparison, we may see sites that offer these services expanding to offer payment and presentment and competing against vendors in the EBPP market as opposed to vice versa. According to Matt Coffin, president and CEO of Lowermybills.com, his company already has plans to add a payment component to its site.

Barret Wolf is a communications consultant at Art Plus Technology, Inc. You can reach him via email at bwolf@artplustechnology.com.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
Plaintiff,)

vs.)

QWEST COMMUNICATIONS)
INTERNATIONAL, INC. and QWEST)
CORPORATION,)
Defendants.)

1:04-cv-0073-LJM-DKL

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,)
Consolidated Plaintiffs,)

vs.)

CENTILLION DATA SYSTEMS, LLC)
and CTI GROUP (HOLDINGS), INC.,)
Consolidated Defendants.)

1:04-cv-2076
(consolidated with above)

ORDER

Pending before the Court are two motions for summary judgment ("Motions"): Plaintiffs Centillion Data Systems, LLC's and CTI Group (Holdings) Inc.'s (collectively, "Centillion") Motion for Partial Summary Judgment of Infringement [Dkt. No. 871],¹ and Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation's

¹ Contemporaneously with the Motions, Centillion filed Plaintiffs Centillion Data Systems, LLC's and CTI Group (Holdings), Inc.'s Request for Oral Argument on Their Motion for Partial Summary Judgment of Infringement [Dkt. No. 879]. Subsequently, the request was renewed in Centillion's Renewed Motion for Oral Argument on Motions for Summary Judgment [Dkt. No. 921]. The Court has sufficient information to decide the Motions without oral argument and, therefore, DENIES Centillion's requests for oral argument [dkt. nos. 879, 921].

In addition, following the submission of supplemental authority and briefing on the same, Qwest filed its Motion for Leave to File a Sur-Reply to Centillion's Reply in Support of Its Notice of Supplemental Authority [Dkt. No. 918]. The Court concludes that a surreply is unnecessary given the extensive briefing already file and DENIES Qwest's motion [dkt. no. 918].

(collectively, "Qwest") Motion for Summary Judgment of Non-Infringement [Dkt. No. 880].

The Court has considered the parties' arguments and evidence and rules as follows.

I. BACKGROUND

On February 15, 1994, the United States Patent and Trademark Office issued United States Patent No. 5,287,270 ("270 Patent"), titled "Billing System," to Compucom Communications Corporation. '270 Patent. Broadly speaking, the '270 Patent allows telephone service providers to provide subscribers with detailed call information that can be easily organized and analyzed. *Id.* Following a corporate reorganization, the '270 Patent was transferred to its current owner, Centillion Data Systems, LLC. Dkt. No. 872 at 4 ¶ 2.

A. RELEVANT CLAIMS OF THE '270 PATENT

Centillion accuses Qwest of infringing claims 1, 8, 10, and 46 of the '270 Patent.

Dkt. No. 884 at 7 ¶ 2. Those claims recite:

1. A system for presenting information concerning the actual cost of a service provided to a user by a service provider, said system comprising:

storage means for storing individual transactions records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction from said storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said individual transaction records including said summary reports from said data processing means to said personal computer data processing means; and

said personal computer data processing means being adapted to perform additional processing on said individual transaction records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said selected records including said exact charges actually billed to said user.

* * *

8. A system for presenting, under control of a user, usage and actual cost information relating to telecommunications service provided to said user by a telecommunications service provider, said system comprising:

telecommunications service provider storage means for storing records prepared by a telecommunications service provider relating to telecommunications usage for one or more telecommunications subscribers including said user, and the exact charges actually billed to said user by said service provider for said usage;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of the records from said service provider storage means to said data processing means;

said data processing means generating preprocessed summary reports as specified by the user from said telecommunications usage records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means;

means for transferring said telecommunications usage records including said summary reports from said data processing means to said personal computer data processing means;

said personal computer data processing means being adapted to perform additional processing on said telecommunications records which have been at least in part preprocessed by said data processing means utilizing said summary reports for expedited retrieval of data, to present a subset of said telecommunications usage records including said exact charges actually billed to said user.

* * *

10. A system as in claim 8 wherein said selected records relating to telecommunications usage and cost comprise at least one telecommunications call detail record corresponding to a unique telecommunications call to be billed to said subscriber, said call having a length determined by said telecommunications carrier.

* * *

46. A system as in claim 8 wherein an information interchange media means in the form of a data communications line is employed for transferring said selected records from said data processing means to said personal computer data processing means.

'270 Patent col.31 l. 39—col.36 l. 7.

B. QWEST'S PRODUCTS

Centillion contends that Qwest infringed the '270 Patent through its Logic, eBill Companion, and Insite products (collectively, "Accused Products"). Centillion moves for summary judgment only as to the eBill Companion ("eBC")² application. Dkt. No. 872 at 12 n.5.

The parties agree that Qwest was aware of the '270 Patent prior to the design and introduction of eBC. Dkt. No. 883-6 at 7-8. Qwest contends that it attempted to design around the '270 Patent and, as a result, the Accused Products were "less robust than

² Logic is the predecessor system to eBC. Dkt. No. 828 at 8. Insite is a product offered to BellSouth customers, and Centillion contends that Insite is functionally identical to both Logic and eBC. *Id.*

desired.” Dkt. No. 884 at 16 ¶ 20. While designing the Accused Products, Qwest’s designers purportedly did not seek legal advice as to whether their design effectively designed around the ‘270 Patent, instead relying on internal discussions among designers. Dkt. No. 886-5 at 4.

Qwest introduced eBC in 2002. Dkt. No. 872-1 at 11. Qwest sends billing information either by CD-ROM or by download to individual customers for use in eBC, although Qwest’s customers are not required to process the sent billing information through eBC or any other program provided by Qwest. Dkt. No. 872-10 at 33; see also *Centillion Data Sys. v. Qwest Comm’ns Int’l, Inc.*, 631 F.3d 1279, 1281 (Fed. Cir. 2011). The billing information consists of call detail records (“CDRs”) for each discrete call captured by Qwest’s telecom switches. Dkt. No. 872 at 13 ¶ 10. The eBC system permits display and billing analysis of long-distance telecommunications usage for particular customers. Dkt. No. 872-10 at 12. Qwest makes eBC available to commercial customers. Dkt. No. 872 at 12 ¶ 6.

To prepare the billing information sent to customers, the CDRs captured through Qwest’s telecom switches are processed in the LATIS system—a software application that runs on various servers—where each CDR is rated to include the exact charges actually billed for a given call. Dkt. No. 872 at 13–14 ¶¶ 11, 13. This rating process includes application of various promotional pricing and discounts. *Id.* The rated CDRs are stored in several locations in Qwest’s architecture, including the Billing Data Server (“BDS”), which is a hard disk device capable of receiving, retaining, and supplying data. *Id.* at 14 ¶ 12. From the BDS, CDRs are transferred via data communication lines to the eBC Back Office, a software application written in Java and XML, upon request. *Id.* at 14 ¶¶ 13–14.

The eBC Back Office application uses the CDR information to create .TXT files. Dkt. No. 892 at 4 ¶ 6. The .TXT files include a collection of all billing records for a given customer. Information on the .TXT files mirrors that contained in the individual CDRs. Of particular interest for purposes of these Motions, the .TXT files contain information about project account codes ("PACs") entered by the customer for a particular call. Dkt. No. 881 at 6 ¶ 19. PACs, which were used by Qwest and its customers prior to eBC's introduction, are set up on request for Qwest customers and allow codes corresponding to particular employees, types of calls, or offices. *Id.* at 7 ¶ 20. A customer using PACs enters the relevant PAC in addition to dialing the relevant telephone number, and data specifying the PAC entered becomes part of the CDR for that call. *Id.* at 6 ¶ 19. In the .TXT files created by eBC Back Office, PACs are included for calls on which they are used. *Id.* For calls made without using PACs, the .TXT file includes a null PAC value. *Id.*

For delivery to customers, these .TXT files are combined with .FMT files manually created by Qwest personnel. Dkt. No. 892 at 4 ¶ 6. The .FMT files, along with aspects of the eBC customer portal, provide the schema for organizing the .TXT files. Dkt. No. 873-4 at 4. All customers receiving billing data through eBC receive the same .FMT files. *Id.* In order to use the billing data in the eBC system, a customer must receive both the relevant .TXT and .FMT files. *Id.*

Qwest's customers can request to receive their billing information either on CD-ROM or by download through the Qwest Control portal. Dkt. No. 872-10 at 12. The billing information, sent to the requesting customer as a .zip file, includes the relevant .TXT and .FMT files configured for use in the eBC customer application. *See generally* dkt. no. 873-8. Qwest does not require that customers receiving this billing information use the eBC

application, and the files may be used by third party applications. Dkt. No. 884 at 13 ¶ 8. Requesting customers receive their billing information at the end of each billing cycle. Dkt. No. 872-10 at 12. Using the On-Demand feature of eBC, however, customers can request billing information for a particular previous time period. Dkt. No. 881 at 8 ¶ 23.

C. PROCEDURAL HISTORY

On January 12, 2004, Centillion brought suit against Qwest in this Court. Dkt. No. 1. On February 14, 2005, the suit was consolidated with a related suit by Qwest against Centillion, originally filed in the United States District Court for the Western District of Washington and transferred to this Court, seeking a declaratory judgment of non-infringement or invalidity of the '270 Patent. See dkt. no. 174.

On January 9, 2008, following briefing and argument, the Court issued its Order on Claim Construction ("*Markman* Order"). The Court construed the disputed claim terms as follows:

CLAIM TERM	CONSTRUCTION
"actual cost"	not a claim limitation
"exact charges actually billed"	the rated cost assigned to each individual transaction record
"means for storing"	a device capable of receiving, retaining, and supplying data

"data processing means"	<p>functions: (1) generating preprocessed summary reports; and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means</p> <p>structure: a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data, and its equivalents</p>
"as specified by the user"	the service customer selects, or makes specific, the character of
"means for transferring"	<p>functions: (1) transferring at least part of said individual transaction records from said storage means to said data processing means; and (2) transferring said individual transaction records including said summary reports to said personal computing data processing means</p> <p>structure: magnetic tape, disk, or data communication lines, or their equivalents</p>
"additional processing"	more action upon or further manipulating
"individual transaction records"	records of discrete events

Dkt. No. 394 at 46.

On October 29, 2009, based on the claim construction set forth in the *Markman* Order and extensive briefing from the parties, the Court issued its Amended Order on summary judgment. *See generally* dkt. no. 828. The Court concluded that the '270 Patent is valid, having not been rendered obvious by previously issued patents. *Id.* at 31. The Court further concluded that Qwest was not liable for direct infringement because it neither operated all potentially infringing aspects of the Accused Products nor directed its customers to use the Accused Products in an infringing manner. *Id.* at 34. Because it concluded that there was no underlying act of direct infringement, the Court concluded that

Qwest could not be held liable for indirect infringement. *Id.*

Centillion appealed the Court's conclusion of non-infringement to the Federal Circuit. Dkt. No. 852 at 3. On May 2, 2011, the Federal Circuit issued an Order vacating in part, reversing in part, and remanding the case back to this Court. *See generally Centillion*, 631 F.3d 1279. The Federal Circuit concluded that Qwest did not engage in direct infringement. *Id.* at 1286. However, it further concluded that the standard operation of the Accused Products by Qwest's customers constitutes "use" for a direct infringement analysis, although it acknowledged that the "use" determination was not a complete finding of infringement, as no comparison of the Accused Products and the claim limitations had occurred. *Id.* at 1285. It remanded the case to this Court for a determination as to whether Qwest could be held liable for indirect infringement based on its customers' use of the Accused Products. *Id.* at 1286.

Following remand, the parties filed the present Motions. Centillion requests a finding that Qwest indirectly infringed Claims 1 and 8 of the '270 Patent by providing the eBC application to customers and instructing them as to its use in an infringing manner. Dkt. No. 872 at 41. Qwest requests a finding of non-infringement as to the entirety of the '270 Patent, contending that the Accused Products do not meet all the claim limitations of the '270 Patent and, alternatively, Qwest did not have the requisite *mens rea* for indirect infringement. Dkt. No. 884 at 6–7. Since filing the Motions, the parties have filed a number of supplemental materials. *See generally* dkt. nos. 886, 889, 898, 901, 903, 905, 914–15, 920, 922–26.

The Court includes additional facts below as necessary.

II. STANDARDS

A. SUMMARY JUDGMENT

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *see also United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267–68 (7th Cir. 1990). Motions for summary judgment are governed by Federal Rule of Civil Procedure 56(a), which provides in relevant part:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Once a party has made a properly-supported motion for summary judgment, the opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials showing that a material fact is genuinely disputed. FED. R. CIV. P. 56(c)(1). A genuine dispute of material fact exists whenever “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine dispute of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996). It is not the duty of the Court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying applicable evidence. *See Bombard v. Ft. Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996).

In evaluating a motion for summary judgment, the Court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. See *Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. See *Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. See *Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). If the moving party does not have the ultimate burden of proof on a claim, it is sufficient for the moving party to direct the court to the lack of evidence as to an element of that claim. See *Green v. Whitco Indus., Inc.*, 17 F.3d 199, 201 & n.3 (7th Cir. 1994). "If the nonmoving party fails to establish the existence of an element essential to [her] case, one on which [she] would bear the burden of proof at trial, summary judgment must be granted to the moving party." *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996).

B. PATENT INFRINGEMENT

Under 35 U.S.C. § 271(a), "whoever without authority makes, uses, offers to sell, or sells any patented invention . . . within the United States . . . infringes the patent." Reviewing whether a particular device or system infringes a patent is a two-step process. See *CAE Screenplates v. Heinrich Fiedler GMBH*, 224 F.3d 1308, 1316 (Fed. Cir. 2000); *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362 (Fed. Cir. 1999). First, the Court must interpret the disputed claims, "from a study of all relevant documents," to determine their

scope and meaning. *K-2 Corp.*, 191 F.3d at 1362; see also *Dolly, Inc. v. Spalding & Evenflo Cos., Inc.*, 16 F.3d 394, 397 (Fed. Cir. 1994). Second, the Court must determine if the accused device, system, or process comes within the scope of the properly construed claims, either literally or by a substantial equivalent. See *K-2 Corp.*, 191 F.3d at 1362; *Dolly*, 16 F.3d at 397; *SmithKline Diagnostics v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988). In this case, the first phase of the infringement analysis, claim construction, occurred prior to the Instant Motions. See dkt. no. 394. Therefore, the Court's analysis focuses on the second phase of the infringement analysis.

The patent owner bears the burden of proving infringement. *Dynacore Holdings Corp. v. U.S. Phillips Corp.*, 363 F.3d 1263, 1273 (Fed. Cir. 2004). The Federal Circuit has found in this case that Qwest did not engage in direct infringement, either on its own or through vicarious liability for any infringing acts by its customers. See *Centillion*, 631 F.3d at 1286. The present Motions, therefore, address indirect infringement only. There are two types of indirect infringement: contributory infringement and inducement to infringe. Both types of indirect infringement require an underlying act of direct infringement. *Akamai Techs., Inc. v. Limelight Networks, Inc.*, Nos. 2009-1372, -1380, -1416-17, 2012 WL 3764695, at *4 (Fed. Cir. Aug. 31, 2012) (per curiam) (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341 (1961); *Henry v. A.B. Dick Co.*, 224 U.S. 1, 12 (1912)).

III. DISCUSSION

As an initial matter, the parties disagree as to whether Centillion previously conceded that Qwest's customers must use Qwest's client software to directly infringe, as

opposed to inputting data received from Qwest into a third-party application with similar functionality. In its opinion, the Federal Circuit noted in dicta that "Centillion concedes that in order to infringe, the customer must install Qwest's client software." *Centillion*, 631 F.3d at 1286 n.2. Centillion contends that it made no such concession and maintains that infringement may be found even if customers process records sent from Qwest using a third-party application rather than Qwest's software. However, a review of Centillion's appellate brief convinces the Court that Centillion made such a concession. Dkt. No. 883-1 at 5 ("Only if the installation of the eBill Companion client application, the downloading of call data, and its importation into the eBC client application are completed according to Qwest's step-by-step directions are the customers' personal computers 'adapted to perform additional processing' as set forth in the claims."). Centillion may not revoke an admission made before the Court of Appeals on remand to this Court. See *United States v. Cunningham*, 405 F.3d 497, 503-04 (7th Cir. 2005) (concession made in appellate brief binding on party). Therefore, the Court limits Centillion's claims to customers purportedly using Qwest's application, rather than a third-party application, to process records and proceeds accordingly.

A. DIRECT INFRINGEMENT

To prove direct infringement, Centillion must show by a preponderance of the evidence that every limitation of the claim asserted to be infringed has been found in the accused device, either literally or by equivalent. *Cross Med. Prods. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1310 (Fed. Cir. 2005). For terms construed as "means-plus-function" terms, infringement "requires that the relevant structure in the accused device

perform the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification.” *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 (Fed. Cir. 2006) (citing *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 324 F.3d 1308, 1320 (Fed. Cir. 2003)). A party may prove direct infringement by circumstantial evidence. *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1326 (Fed. Cir. 2009).

As the parties agree, and the Federal Circuit concluded, that Qwest did not directly infringe the '270 Patent, Centillion must show that direct infringement occurred through Qwest's customers' use of the Accused Products.³ The Federal Circuit concluded that Qwest's customers “use” the Accused Products as a matter of law, but the Court noted that this finding did not conclude the direct infringement inquiry. *Centillion*, 631 F.3d at 1285–86. The Court must still determine whether the Accused Products meet all limitations of the claim terms. *Cross Med. Prods.*, 424 F.3d at 1310. In this type of direct infringement analysis, where the steps allegedly constituting infringement are performed sequentially by numerous non-related actors, rather than a single company or actor, it must be shown that

³ In one of its supplemental authority submissions, Centillion contends that the Federal Circuit en banc decision in *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2012 WL 3764695 (Fed. Cir. Aug. 31, 2012) (per curiam), undermines the Federal Circuit's previous statement in this litigation that “Qwest does not ‘make’ the patented invention . . . as a matter of law.” See *Centillion*, 631 F.3d at 1288. Centillion argues that it should be permitted to argue that Qwest is a direct infringer through “making” the patented invention. See generally dkt. no. 922.

Having reviewed *Akamai* and the Federal Circuit's decision in this case, the Court concludes that *Akamai* does not require reevaluation of the Federal Circuit's finding. *Akamai* states that “the party that adds the final element to the combination ‘makes’ the infringing product and is thus liable for direct infringement even if others make portions of the product.” 2012 WL 3764695, at *11. In this case, there is little doubt that Qwest's customers complete the system by installing and using the Accused Product on their PCs—in other words, the final element is added by the customer, not Qwest. *Akamai* does not control clearly enough to justify deviation from the Federal Circuit's clear statement that Qwest is not a direct infringer under either the “use” or “make” standard. See *Centillion*, 631 F.3d at 1288.

Although Qwest still may be held liable as an indirect infringer if Qwest's customers are found to be direct infringers and other legal criteria are met, the Federal Circuit's decision as to Qwest's status as a direct infringer is the law of the case and will be upheld as such.

eBC meets all the claim limitations when fully operated and that eBC was indeed operated as such. *Cf. Akamai Techs.*, 2012 WL 3764695, at *4–*5.

1. CLAIM 1

The parties agree that eBC encompasses all of the following elements of Claim 1:

A system for presenting information concerning the actual cost of a service provided to a user by a service provider, said system comprising:

storage means for storing individual transaction records prepared by said service provider, said transaction records relating to individual service transactions for one or more service customers including said user, and the exact charges actually billed to said user by said service provider for each said service transaction;

data processing means comprising respective computation hardware means and respective software programming means for directing the activities of said computation hardware means;

means for transferring at least a part of said individual transaction records from said storage means to said data processing means;

....

means for transferring said individual transaction records . . . from said data processing means to said personal computer data processing means

'270 Patent col.31 ll. 39–55, 63–66. In other words, elements one, two, three, and four of Claim 1, as well as a portion of element six, are present in eBC. *See generally* dkt. no. 872; *see also* dkt. no. 889 at 9.

However, Qwest contends that eBC does not meet the other elements of Claim 1. Specifically, Qwest contends that Centillion has not proven that any of Qwest's customers use eBC in a manner that satisfies the "as specified by the user" limitation of element five of Claim 1. *See* '270 Patent col.31 l.57. In addition, Qwest contends that the data

processing means of eBC does not generate “summary reports,” “create database tables,” “edit data,” or “segregate data . . . by record type” as required by elements five, six, and seven—see *id.* at col.31 ll. 57, 64; col.32 l. 3—as well as the Court’s construction of the means-plus-function limitations of the “data processing means” term. See dkt. no. 394 at 31. The Court addresses these contentions in turn.

a. “as specified by the user”

The fifth element of Claim 1 requires “said data processing means generating preprocessed summary reports as specified by the user from said individual transaction records transferred from said storage means and organizing said summary reports into a format for storage, manipulation and display on a personal computer data processing means[.]” ‘270 Patent col.31 ll. 56–62. In the *Markman* Order, the Court construed “as specified by the user” to mean “the service the customer selects, or makes specific, the character of.” Dkt. No. 394 at 34. Centillion contends that eBC meets the “as specified by the user” limitation through its use of PACs and its On-Demand functionality, as well as customizations to the .TXT files made in response to requests by particular customers.

The Court concludes that inclusion of PACs in customer’s billing information does not meet the “as specified by the user” limitation of the fifth element of Claim 1. Qwest’s customers use of PACs is configured completely outside of the eBC framework, and PACs may be used by customers regardless of whether they analyze billing records with eBC, with a third-party application, or not at all. Dkt. No. 881 at 7 ¶ 20. Customers may enter a PAC when placing a call, but they are not required to do so, and a section for PACs is included in the billing information provided by Qwest in conjunction with eBC even if

customers choose not to enter a PAC. Dkt. No. 891-2 at 15–16. Inclusion of PACs in the billing information generated by Qwest is no different than inclusion of the telephone number dialed, a mere piece of data, and there is little doubt that dialing a particular telephone number does not satisfy the “as specified by the user” limitation. In short, the Court concludes that use of PACs does not meet the “as specified by the user” limitation.

In addition, the Court concludes that Qwest did not perform customization for particular customers so as to meet the “as specified by the user” limitation. Centillion contends that changes made to the .TXT files in response to customer feedback, such as from Wells Fargo, meet the “as specified by the user” limitation. However, Centillion concedes that customers who have had their data files customized cannot use the eBC client application software. Dkt. No. 884 at 19; dkt. no. 886 at 13 n.10. As discussed above, Centillion has already conceded that infringement requires use of the eBC client application software. Therefore, the Court concludes that any “customization” alleged by Centillion does not meet the “as specified by the user” limitation of Claim 1.

However, the Court concludes that use of the On-Demand feature does meet the “as specified by the user” limitation. On-Demand allows a customer to submit a request to receive billing information for a particular previous billing cycle. Dkt. No. 881 at 7 ¶ 22. In doing this, the customer “selects . . . the character of” the information being provided, specifying that the information cover only a particular time period. Qwest argues that because the time period selected is limited by billing cycle—in other words, a customer cannot request just any time period, but instead the time period requested must correspond to a billing cycle—the “as specified by the user” limitation is not met. However, “as specified by the user” does not require as much flexibility as Qwest would like, and it is

sufficient that the customer may select a subset of available time ranges, even if that selection must correspond to a particular billing cycle.

Having determined that use of the On-Demand feature meets the "as specified by the user" limitation, the Court still must determine what evidence is necessary to show this element. Qwest contends that Centillion must bring forth evidence of specific customers that specified the character of the data and reports they were receiving, above and beyond evidence that the On-Demand feature provides the capacity to allow customers to make those selections. Centillion contends that the Court's claim construction of "data processing means" in conjunction with "as specified by the user" renders the limitation one of capability, not actual operability.

Examining the language of the claims, the Court concludes that mere capacity is insufficient. The fifth element of Claim 1 speaks of a "data processing means generating . . . reports as specified by the user," language that speaks of the data processing means taking some sort of action to bring the reports into existence. However, Qwest's contention that Centillion must bring forth evidence such as customer deposition testimony of use of the On-Demand feature asks too much, as Centillion may prove that the feature was used through circumstantial evidence. *Vita-Mix Corp.*, 581 F.3d at 1326. Reviewing the evidence, the Court concludes a genuine dispute of material fact exists as to whether at least one of Qwest's customers used the On Demand feature. For instance, Nick Bates of MedQuist, Inc. sent a complaint to Qwest's help desk stating, "I am trying to download On-Demand files, I receive the emails that state that they are completed, but they do not appear on the website for me. A co-worker of mine has no problem with this feature." Dkt. No. 886-9 at 3. Contrary to Qwest's argument, this is more than the descriptions in the

user's manual found insufficient by the Federal Circuit in *Mirror Worlds*. See *Mirror Worlds, LLC v. Apple, Inc.*, No. 2011-1392, 2012 WL 3800812, at *8–*9 (Fed. Cir. Sept. 4, 2012). The Court concludes that use of the On-Demand feature meets the “as specified by the user” limitation of Claim 1 and that there is a factual dispute as to whether Qwest's customers actively used the feature.

b. Means-plus-function construal of “data processing means”

Qwest contends that eBC does not have a “data processing means” as that term was construed in the *Markman* Order. Centillion contends that eBC Back Office, LATIS, or a combination thereof is a “data processing means” as defined by the Court. The Court construed “data processing means” as a means-plus-function term under 35 U.S.C. § 112, ¶ 6. Specifically, the Court concluded that data processing means performs the functions of (1) generating preprocessed summary reports and (2) organizing said summary reports into a format for storage manipulation and display on a personal computer data processing means. Dkt. No. 394 at 31. The structure corresponding to these functions was construed as “a computer that is programmed to segregate data by customer and record type, to edit and accumulate data to produce reports, to create database tables and additional records for storage, and to convert data into a PC-compatible format and its equivalents.” *Id.* As noted above, infringement of a means-plus-function term “requires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification.” *Applied Med. Res. Corp.*, 448 F.3d at 1333. Equivalence in structure may be proven “by showing that [] two [structures] perform the identical function in substantially the same way, with

substantially the same result.” *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1364 (Fed. Cir. 2000).

Examining the required functions of the data processing means, the Court concludes that the eBC Back Office and LATIS, or a combination thereof, generates preprocessed summary reports as required by the claims. In the *Markman* Order, the Court defined “summary report” as “a collection of analyzed and/or reorganized data.” Dkt. No. 394 at 41. The Court left open the possibility that a report including all billing information for a particular customer would constitute a summary report and did not place any limitation on the format of the summary report. *Id.* The eBC Back Office organizes the billing information by customer and inserts that information into various .TXT files, although viewing of these .TXT files requires additional .FMT files constructed by Qwest personnel outside of the eBC framework. Dkt. No. 892 at 4 ¶ 6. These .TXT files, even apart from the .FMT files, are sufficient to constitute summary reports as that term has been construed, as they include “a collection of . . . reorganized data.” Centillion has brought forth evidence that at least some of Qwest’s customers receive their billing information and use it in eBC—in other words, at least some of Qwest’s customers receive the .TXT files, preprocessed summary reports. *See, e.g.*, dkt. no. 872 at 18 ¶ 27. Therefore, the Court concludes that eBC Back Office generates a preprocessed summary report.

Turning to the other required function of the data processing means, however, the Court concludes that eBC Back Office, LATIS, or a combination thereof, does not “organiz[e] said summary reports into a format for storage manipulation and display on a personal computer data processing means.” *See* dkt. no. 394 at 31. Although LATIS and eBC Back Office perform the steps necessary to create a summary report—the relevant

.TXT file—neither of those systems organize the summary reports into a format for display on a personal computer. Instead, the customer must be provided with a .FMT file and schema within the eBC client application to interact with the .TXT file and allow display of the summary reports on a personal computer. Dkt. No. 892 at 4 ¶ 6. The .FMT file is generated by Qwest personnel apart from either LATIS or eBC Back Office. *Id.* Neither LATIS nor eBC Back Office—the alleged data processing means—performs the steps necessary to format the .TXT file for display. Because Centillion has not brought forth evidence that the so-called data processing means “organiz[e] . . . summary reports into a format for . . . display,” the Court concludes that eBC fails to perform a required function of the data processing means and, therefore, fails to meet all limitations of Claim 1.

As noted above, direct infringement requires that every limitation of the claim asserted to be infringed has been found in the accused device, either literally or by equivalent. *Cross Med. Prods.*, 424 F.3d at 1310. For means-plus-function limitations, the relevant structure must “perform the identical function recited in the claim.” *Applied Med. Res. Corp.*, 448 F.3d at 1333. Because the Court concludes that the data processing means of eBC does not perform all required functions set forth in the limitations of Claim 1, the Court concludes that eBC does not infringe Claim 1 of the '270 Patent.

2. CLAIM 8

Claim 8 tracks Claim 1 specifying operation by “telecommunications service providers” and involving “telecommunication usage records.” *See generally* '270 Patent col.32 ll. 30–46. As the parties do not dispute that Qwest is a “telecommunications service provider” and any records distributed by Qwest are “telecommunication usage records,” the

direct infringement analysis for Claim 8 is identical to the analysis for Claim 1. See *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1371 (Fed. Cir. 2003) (requiring identical construction of identical claim terms). Because, as discussed above, eBC does not infringe all limitations of Claim 1, and the relevant limitations of Claim 8 contain identical claim terms, the Court concludes that eBC does not infringe Claim 8 of the '270 Patent.⁴

B. INDIRECT INFRINGEMENT

In order for Qwest to be held liable for indirect infringement—either contributory infringement or inducement of infringement—an underlying act of direct infringement, in this case committed by Qwest's customers, must be shown. *Akamai Techs.*, Nos. 2009-1372, -1380, -1416-17, 2012 WL 3764695, at *4 (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341 (1961); *Henry v. A.B. Dick Co.*, 224 U.S. 1, 12 (1912)); see also *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1364 (Fed. Cir. 2012). As discussed above, eBC fails to meet all claim limitations of the '270 Patent and, therefore, no direct infringement has occurred. Consequently, Qwest cannot be held liable for indirect infringement⁵ and is entitled to summary judgment.

⁴ As Claims 10 and 46 of the '270 Patent are dependent claims based on Claim 8, the Court concludes that eBC does not infringe those Claims either.

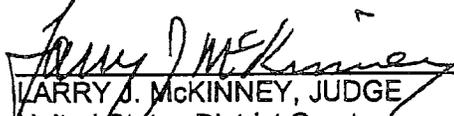
⁵ Because Centillion has not shown that direct infringement has occurred, the Court declines to address whether Qwest had the requisite mens rea to indirectly infringe the '270 Patent.

IV. CONCLUSION

For the reasons set forth herein, the Court rules as follows:

- 1) Plaintiffs Centillion Data Systems, LLC's and CTI Group (Holdings) Inc.'s Motion for Partial Summary Judgment of Infringement [Dkt. No. 871] is **DENIED**.
- 2) Defendants Qwest Communications International, Inc. and Qwest Corporation, and Consolidated Plaintiffs Qwest Corporation and Qwest Communications Corporation's Motion for Summary Judgment of Non-Infringement [Dkt. No. 880] is **GRANTED**.
- 3) Plaintiffs Centillion Data Systems, LLC's and CTI Group (Holdings), Inc.'s Request for Oral Argument on Their Motion for Partial Summary Judgment of Infringement [Dkt. No. 879] is **DENIED**.
- 4) Qwest's Motion for Leave to File a Sur-Reply to Centillion's Reply in Support of Its Notice of Supplemental Authority [Dkt. No. 918] is **DENIED**.
- 5) Centillion's Renewed Motion for Oral Argument on Motions for Summary Judgment [Dkt. No. 921] is **DENIED**.

IT IS SO ORDERED this 28th day of September, 2012.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

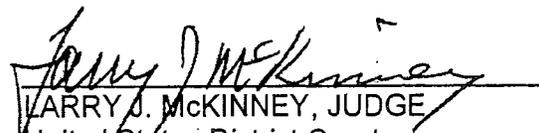
CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff,)	
)	
vs.)	
	)	1:04-cv-0073-LJM-DKL
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	

QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
	)	1:04-cv-2076
vs.	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC)	
and CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

ORDER

The Court, on its own motion, has determined that its Order dated September 28, 2012 (Dkt. No. 927), is not complete and is hereby **VACATED**. A new amended Order shall issue within thirty days.

IT IS SO ORDERED this 4th day of October, 2012.


 HARRY J. MCKINNEY, JUDGE
 United States District Court
 Southern District of Indiana

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A5261 – A5266

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)
) Case No. 1:04-cv-0073-LJM-DML
) *Plaintiff,*)
))
) v.)
))
QWEST COMMUNICATIONS)
INTERNATIONAL, INC., and QWEST)
CORPORATION,)
) *Defendants.*)

QWEST CORPORATION and QWEST)
COMMUNICATIONS CORPORATION,) Case No. 1:04-CV-2076
) [Consolidated with above]
) *Consolidated Plaintiffs,*)
))
) v.)
))
CENTILLION DATA SYSTEMS, LLC,)
) *Consolidated Defendant.*)
))
-----x

**DEFENDANTS QWEST COMMUNICATIONS INTERNATIONAL, INC.'S AND
QWEST CORPORATION'S AND DECLARATORY RELIEF PLAINTIFFS QWEST
CORPORATION'S AND QWEST COMMUNICATIONS CORPORATION'S
NOTICE OF CROSS-APPEAL**

Notice is hereby given pursuant to 28 U.S.C. § 1295 and Rule 4 of the Federal Rules of Appellate Procedure that Defendants Qwest Communications International, Inc. and Qwest Corporation and Declaratory Relief Plaintiffs Qwest Corporation and Qwest Communications Corporation (hereinafter collectively "Qwest") hereby appeal to the United States Court of Appeals for the Federal Circuit from the following Orders of the United States District Court for the Southern District of Indiana, Judge Larry J. McKinney:

(1) The Order on Claim Construction dated January 9, 2008 (D.I. 394) limited to the term “summary reports”;

(2) The Order on Defendants’ Motions dated February 26, 2008 (D.I. 410)¹; and

(3) The Amended Order dated October 29, 2009 (D.I. 828) and the associated Judgment entered November 3, 2009 (D.I. 829), to the extent set forth below:

a) denying Qwest’s Motion for Summary Judgment of Invalidity of the '270 Patent²;

b) granting Centillion Data Systems, LLC and Consolidated Defendant’s CTI Group (Holdings), Inc.’s Motion for Partial Summary Judgment Related to Validity of the '270 Patent.

Dated this 11th day of December, 2009.

/s/ Vincent J. Belusko
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*Attorneys for Defendants Qwest Corporation and
Qwest Communications International, Inc., and
Declaratory Relief Plaintiffs Qwest Corporation
and Qwest Communications Corporation*

¹ Order on Defendants Convergys Corporation’s, Qwest Communications International, Inc.’s and Qwest Corporation’s Motion for Summary Judgment of Invalidity (D.I. 398).

² U.S. Patent No. 5,287,270.

CERTIFICATE OF SERVICE

I certify that on December 11, 2009, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system:

<p>Phillip Fowler BINGHAM McHALE, LLP 2700 West Market Tower 10 West Market Street Indianapolis, IN 46204-4900 pfowler@binghammchale.com</p> <p>Victor Wigman Paul Honigberg Michael D. White Keeto Sabharwhal Alan Freeman Nirav N. Desai BLANK ROME, LLP 600 New Hampshire Avenue, N.W. Washington, DC 20037 white@blankrome.com wigman@blankrome.com honigberg@blankrome.com sabharwhal@blankrome.com freeman@blankrome.com desai@blankrome.com</p> <p>Kenneth L. Bressler BLANK ROME LLP The Chrysler Building 405 Lexington Avenue New York, NY 10174 KBressler@Blankrome.com</p>	<p><i>Counsel for Plaintiff, Centillion Data Systems, LLC</i></p>
--	---

/s/ Vincent J. Belusko
Vincent J. Belusko

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,)	
Plaintiff,)	
)	
vs.	)	1:04-cv-0073-LJM-DML
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. and QWEST)	
CORPORATION,)	
Defendants.)	
_____)	
)	
QWEST CORPORATION and QWEST)	
COMMUNICATIONS CORPORATION,)	
Consolidated Plaintiffs,)	
)	
vs.	)	1:04-cv-2076
	)	(consolidated with above)
)	
CENTILLION DATA SYSTEMS, LLC and)	
CTI GROUP (HOLDINGS), INC.,)	
Consolidated Defendants.)	

ENTRY OF JUDGMENT

Through an Order dated September 22, 2009, this Court granted defendants/consolidated plaintiffs', Qwest Communications International, Inc. and Qwest Corporation ("Defendants"), Motion for Partial Summary Judgment. The Court concluded that 28 U.S.C. § 1498 barred plaintiff/consolidated defendant's, Centillion Data System, LLC, and consolidated defendant's, CTI Group (Holdings), Inc. (collectively, "Plaintiffs"), patent infringement claims based upon Defendants' performance under certain government contracts.

Through an Order dated October 29, 2009, the Court granted Plaintiffs' Motion for Partial Summary Judgment; denied Plaintiffs' Motion for Partial Summary Judgment of

Infringement; denied Defendants' Motion for Summary Judgment of Invalidity of the '270 Patent, and granted Defendants' Motion for Summary Judgment of Noninfringement. In the Order, the Court granted summary judgment in favor of Plaintiffs on Defendants' claim that prior art invalidated the patent-in-suit, U.S. Patent 5,287,270. In addition, the Court granted summary judgment in favor of Defendants on their claim of noninfringement. Therefore, the patent infringement claims brought by plaintiff/consolidated defendant's, Centillion Data System, LLC, and consolidated defendant's, CTI Group (Holdings), Inc., are **DISMISSED** with prejudice. Plaintiffs shall take nothing by way of their complaints.

IT IS SO ORDERED this 3rd day of November, 2009.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

LAURA A. BRIGGS, CLERK
United States District Court
Southern District of Indiana

By: 
Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CENTILLION DATA SYSTEMS, LLC,	)	Case No. 1:04-cv-0073-LJM-DML
)	
Plaintiff,)	
)	
v.)	
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC., and QWEST)	
CORPORATION,)	
)	
Defendants.)	
)	
<hr/>		Case No. 1:04-cv-2706
QWEST CORPORATION; QWEST	)	<i>(consolidated with above)</i>
COMMUNICATIONS CORPORATION,)	
)	
Consolidated Plaintiffs,)	
)	
v.)	
)	
CENTILLION DATA SYSTEMS, LLC;)	
CTI GROUP HOLDINGS, INC.,)	
)	
Consolidated Defendants.)	
)	

ENTRY OF AMENDED JUDGMENT

Through an Order dated September 22, 2009, this Court granted defendants/consolidated plaintiffs' Qwest Communications International, Inc. and Qwest Corporation ("Defendants"), Motion for Partial Summary Judgment. The Court concluded that 28 U.S.C. § 1498 barred plaintiff/consolidated defendant's, Centillion Data System, LLC, and consolidated defendant's, CTI Group (Holdings), Inc. (collectively, "Plaintiffs"), patent infringement claims based upon Defendants' performance under certain government contracts.

Through an Order dated October 29, 2009, the Court granted Plaintiffs' Motion for Partial Summary Judgment; denied Plaintiffs' Motion for Partial Summary Judgment of Infringement; denied Defendants' Motion for Summary Judgment of Invalidity of the '270 Patent, and granted Defendants' Motion for Summary Judgment of Noninfringement. In the

Order, the Court granted summary judgment in favor of Plaintiffs on defendants' claim that prior art invalidated the patent-in-suit, U.S. Patent 5,287,270. In addition, the Court granted summary judgment in favor of Defendants on their claim of noninfringement. Therefore, the patent infringement claims brought by plaintiff/consolidated defendants Centillion Data Systems, LLC, and consolidated defendants CTI Group (Holdings), Inc. are **DISMISSED** with prejudice. Plaintiffs shall take nothing by way of their complaints.

Additionally, Defendants (Qwest) assert several affirmative defenses, including defenses for invalidity not addressed in Centillion's granted motion regarding anticipation (directed only at TRACE/COBRA prior art), affirmative defenses directed at unenforceability and a claim for invalidity raised in its declaratory judgment action directed at the '270 patent. To promote judicial economy and with the consent of all the parties, the Court dismisses all of Defendants' affirmative defenses and its declaratory judgment claim for invalidity **without** prejudice to Defendants' rights to re-raise the affirmative defenses and declaratory judgment claim in the future in this action to the extent that the affirmative defenses and declaratory judgment claim could have been asserted on or before October 29, 2009, if this action is remanded for further consideration.¹

IT IS SO ORDERED this 26th day of January, 2010.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Laura A. Briggs, Clerk

BY: 
Deputy Clerk, U.S. District Court

¹ "Defendants" include Consolidated Declaratory Relief Plaintiff Qwest Communications Corporation.

Centillion's interpretation of "specified by the user" as "specific to the user" is consistent with those arguments. By generating data specific to the user, only the data relevant to that user can be further processed by the user on its personal computer. If no such data separation took place, users would have access to all of the data of all the other users – clearly, an undesirable and impractical result from both computer-efficiency and privacy perspectives. Furthermore, the amendment arguments drew a distinction between data that the user "desires" to retrieve and data that is specific to that user. Thus, even though data specific to the user is transferred to that user, the user still needs to identify the data that the user desires to retrieve for further presentation on the personal computer.

Defendants urge a facile interpretation for "as specified by the user" that, while it may have some superficial appeal, is flawed and legally-unsupportable. Defendants' proffered definition would require the user to pre-select which summary reports are to be pre-processed by the data processor. Centillion can find no support for Defendants' construction in the intrinsic evidence.

8. **Claim Term: "organizing said summary reports into a format for storage, manipulation, and display on a personal computer data processing means"**

Interpretation: arranging analyzed or re-organized data into a format readable by software on a personal computer data processing means

As with the majority of terms in the '270 patent, the "organizing . . . into a format" term needs no further clarification. Organizing, storage, manipulation, and display are all common words, with no special meanings. To one of ordinary skill in the art of computerized billing and management systems, "organizing said summary reports *into a format* for storage, manipulation and display on commonly available personal computers" means what it plainly says: arranging analyzed or re-organized data *into a format* readable by software on a personal computer.

