Link: 129

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ENFISH, LLC,
Plaintiff,
v.
MICROSOFT CORPORATION; FISERV, INC.; INTUIT, INC.; SAGE SOFTWARE, INC.; and JACK HENRY & ASSOCIATES, INC.,
Defendants.

Case No. 2:12-cv-7360-MRP-MRWx

Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment of Anticipation

I. INTRODUCTION

Plaintiff Enfish, LLC ("Enfish") has sued Defendants Microsoft Corporation ("Microsoft"), Fiserv, Inc., Intuit, Inc., Sage Software, Inc., and Jack Henry & Associates, Inc. (collectively, "Defendants") for infringement of two patents: U.S. Patent No. 6,151,604 ("the '604 Patent") and U.S. Patent No. 6,163,775 ("the '775 Patent"). Defendants move for summary judgment of invalidity as to Claims 1, 2, 16, 17, 31, 32, 46, and 47 of the '604 Patent and Claims 31, 32, and 47 of the '775

Patent as anticipated under 35 U.S.C. § 102 by Microsoft's Excel 5.0 software product.

II. TECHNICAL BACKGROUND

Electronic databases are tools for managing data stored in a digital computer. Databases allow users to store collections of related data. In addition to the stored data, a database management system also stores definitional data called metadata. Metadata describes and defines the database, including information about where the data is physically stored on the computer. Users can interact with data stored in a database management system in different ways. For example, a user can directly manage stored data in a database management system, or a user may interact with an application or interface that connects to the database management system and provides the stored data or metadata.

Depending upon the volume of data stored and the relationships between the data items, different database management systems may be optimal. In the mid-1990s, relational databases dominated the marketplace. The relational database model enabled users to view stored data as a collection of interrelated tables,[1] regardless of the amount of memory allocated to each table or the physical location of the stored data. The relational database model, however, suffered limitations due to the complexity of interrelationships between large numbers of tables with many items of data. Object-oriented database management systems, and hybrid databases with "object-relational" functionality, allow database storage by relationship with the use of pointers linked to objects. Object-oriented database management systems have no need to map relational rows and columns, but had other shortcomings, including limited query support.

The asserted claims in the '604 and '775 patents are directed to methods and systems relating to data storage and retrieval. Claims 1, 16, and 17 of the '604

[1] The nature of the logical table as well as other important aspects of the inventions of the '604 and '775 Patents are described in this Court's Claim Construction Order. *See* Dkt. No. 86 at 4.

Patent are means-plus function claims directed to a data storage system. Asserted Claims 1 of the '604 Patent claims:

> A data storage and retrieval system for a computer memory, comprising:
>
> means for configuring said memory according to a logical table, said logical table including:
>
> a plurality of logical rows, each said logical row having an object identification number (OID) to identify each said logical row, each said logical row corresponding to a record of information;
>
> a plurality of logical columns intersecting said plurality of logical rows to define a plurality of logical cells, each said logical column having an OID to identify each said logical column; and wherein
>
> at least one of said logical rows has an OID equal to the OID of a corresponding one of said logical columns, and at least one of said logical rows includes logical column information defining each of said logical columns.

Independent Claim 16 of the '604 Patent claims the same limitations as Claim 1, but omits the language "and wherein at least one of said logical rows has an OID equal to the OID of a corresponding one of said logical columns, and at least one of said logical rows includes logical column information defining each of said logical columns" (the "row defining column limitation"). Claim 16 instead requires that "said OID's are variable length" (the "variable length OID limitation"). Independent Claim 17 omits the same language from Claim 1 and includes an additional "means for indexing data stored in said table" (the "indexing limitation").

Claim 31 is a method claim. Asserted Claim 31 of the '604 Patent claims the method that embodies the means-plus-function Claim 1. Claim 31 claims a "method for storing and retrieving data in a computer memory," rather than a system from data storage and retrieval, and includes one step of "configuring said

memory according to a logical table," wherein the logical table includes the same claim elements described in Claim 1. Independent Claim 46 of the '604 Patent claims the method that embodies the means-plus-function Claim 16 by omitting the row defining column limitation instead requiring the variable length OID limitation. Independent Claim 47 likewise claims the method that embodies means-plus-function Claim 17, omitting the same language and adding the indexing limitation.

The asserted dependent claims of the '604 Patent, Claims 2 and 32, each add the claim limitation "wherein said logical column information defines one of said logical columns to contain information for enabling determination of OIDs from text entry" (the "text entry limitation") to respective Claims 1 and 31.

The asserted claims of the '775 Patent are similarly directed to methods for storing and retrieving data, but focus on the cells, addresses, attribute sets, and records within the logical table. Independent Claim 31 claims:

> A method for storing and retrieving data in a computer system having a memory, a central processing unit and a display, comprising the steps of:
>
> configuring said memory according to a logical table, said logical table including:
>
> a plurality of cells, each said cell having a first address segment and a second address segment;
>
> a plurality of attribute sets, each said attribute set including a series of cells having the same second address segment, each said attribute set including an object identification number (OID) to identify each said attribute set; and
>
> a plurality of records, each said record including a series of cells having the same first address segment, each said record including an OID to identify each said record, wherein at least one of said records has an OID equal to the OID of a corresponding one of said attribute

sets, and at least one of said records includes attribute set information defining each of said attribute sets.

Claim 32 is dependent on Claim 31 and also adds the text entry limitation. Independent Claim 47 is identical to Claim 31 except that it omits row defining column limitation and includes the indexing limitation.

On July 15, 2013, the Court construed nine claim terms from the '604 and '775 Patents. See Claim Construction Order, Dkt. No. 86. The Court declined to import several limitations from the specification into the construction of the claim terms. Relevantly, the Court found that the term "logical table" was not limited to tables that were self-referential, contained appendable columns, and were capable of storing both structured and unstructured data as well as different types of records. The Court also refused to limit the terms "logical table" and the pluralities of intersecting columns and rows to either a sparse matrix or a dense matrix.

III. LEGAL STANDARD

A. Summary Judgment

The Court shall grant summary judgment if there is no genuine dispute as to any material fact, as supported by facts on the record that would be admissible in evidence, and if the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56.; *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). In order to grant summary judgment, the Court must identify material facts by reference to the governing substantive law, while disregarding irrelevant or unnecessary factual disputes. *Anderson*, 477 U.S. at 248. The Court must view facts and draw reasonable inferences in favor of the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). If there is any genuine dispute about a material fact such that a reasonable jury could return a verdict for the nonmoving party, summary judgment cannot be granted. *Id.* If the party moving for summary judgment does not bear the burden of proof as to a particular material fact, the moving party need only give notice of

the absence of a genuine issue of material fact so that the non-moving party may come forward with all of its evidence. *Exigent Tech., Inc. v. Atrana Solutions, Inc.*, 442 F.3d 1301, 1307–08 (Fed. Cir. 2006).

B. Invalidity under Anticipation

A patent claim is anticipated under 35 U.S.C. § 102(b) if it was "described in a printed publication in this country . . . more than one year prior to the date of application for patent in the United States." "[A]n anticipation analysis has two parts: first, the disputed claim terms are construed, then the construed claims are compared to the prior art. *Regents of Univ. of Minnesota v. AGA Med. Corp.*, 717 F.3d 929, 939–40 (Fed. Cir. 2013). Comparing the construed claim terms with the prior art is a question of fact. *Zenith Elecs. Corp. v. PDI Commun. Sys.*, 522 F.3d 1348, 1356–57 (Fed. Cir. 2008). Each and every limitation of the construed claim must be found in a single prior art reference. *ArcelorMittal France v. AK Steel Corp.*, 700 F.3d 1314, 1322 (Fed. Cir. 2012). Because an issued patent is presumed valid under 35 U.S.C. § 282, the party moving for finding of invalidity bears the burden of showing that each asserted claim is anticipated by clear and convincing evidence. *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1376 (Fed. Cir. 2009).

Since each claim in a patent is entitled to "an independent presumption of validity," every claim "stands or falls independent of the other claims." *Continental Can Co. U.S.A. v. Monsanto Co.*, 948 F.2d 1264, 1266–67 (Fed. Cir. 1991). Accordingly, in order to anticipate a dependent claim, the prior art reference must show every limitation of both the dependent claim and every limitation of the independent claim from which it depends. A means plus function claim "is anticipated by a prior art reference if that reference discloses all elements of the claimed invention, including means-plus-function structures or their equivalents." *Regents of Univ. of Minnesota*, 717 F.3d at 940. Therefore, a means plus function claim is anticipated only if the prior art reference discloses any

structure encompassed by the means plus function claim and the structure performs the same function recited in the claim. *See In re Guess*, 347 F. App'x 558, 560 (Fed. Cir. 2009) ("A means-plus-function limitation encompasses all of the structures in the specification that perform the recited function. Thus, for anticipation purposes, a prior art reference that discloses any of the structures encompassed by the means-plus-function clause anticipates that claim.").

IV. DISCUSSION

A. Microsoft's Excel 5.0 is admissible, relevant prior art to the '604 and '775 Patents

The '604 and '775 Patents issued from continuation applications claiming priority to U.S. Patent App. No. 08/383,752, issued as U.S. Patent No. 5,729,730. The parent application has a filing date of March, 28, 1995. First Amended Complaint, Dkt. No. 30, Exs. A–B. Accordingly, under 35 U.S.C. 102(b), Excel 5.0 qualifies as prior art if the system was "in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States."

Microsoft sells Excel software as part of its Office package of software, which also includes Microsoft Word, PowerPoint, and other programs. In late 1993, Microsoft announced and began advertising its Excel 5.0 product. Statement of Uncontroverted Facts and Conclusions of Law In Support of Defendants' Motion for Summary Judgment of Anticipation Based On Excel 5.0 ("Microsoft SOF"), ¶ 9–11, Dkt. No. 131; Declaration of Theodore Wimsatt ("Wimsatt Decl.") at Ex. 1, Dkt. No. 132. On January 6, 1994, Microsoft issued a press release stating that Excel 5.0 "went to manufacturing on Dec. 17, 1993, and has begun shipping." First Declaration of Michael Pizzo ("First Pizzo Decl.") at Ex. 3, Dkt. No. 134. Hundreds of thousands of copies of Excel shipped on or before January 6, 1994. *Id*. The manufactured units included nine floppy diskettes containing the Excel 5.0 software. Microsoft SOF, ¶ 14; Wimsatt Decl. at Ex. 6; First Pizzo Decl., ¶¶ 20–

22, 33 and Exs. 5–7. The units shipped at that time met "existing orders for" Excel 5.0 "automatic upgrades," which had been offered to customers in late 1993. First Pizzo Decl. at Ex. 3; *see also* Microsoft SOF, ¶ 17; Wimsatt Decl. at Ex. 1. In addition, Excel 5.0 was scheduled to "be generally available" to the public "by the end of January [1994]."[2] First Pizzo Decl. at Ex. 3. Consistent with the 1993 release to manufacturing and the 1994 shipment to customers, the initial Excel 5.0 diskettes were marked with a 1993 copyright notice and the manuals show a 1994 copyright notice. Microsoft SOF, ¶¶ 11–16; Wimsatt Decl. at Ex. 3.

The Excel 5.0 diskettes contained sample files, which included a sample database called "Northwind." Microsoft SOF, ¶ 15. The Northwind database included data stored as part of an Excel spreadsheet and contained a header row with column names. *Id*.; First Pizzo Decl. ¶¶ 33, 38–39; Corrected First Declaration of Stephen Gray ("First Gray Decl."), ¶ 86, Dkt. No. 137. The Excel 5.0 product also shipped with a User Guide that included instructions on the use and capabilities of the Excel 5.0 software and provided screen capture images from the program. First Pizzo Decl. ¶¶ 35–37.[3] The advertisements, products, press release, and publications together conclusively establish that Excel 5.0 was on sale in the U.S. by January 6, 1994.

---

[2] Microsoft also provided or sold the Excel 5.0 product to reviewers, who used Excel 5.0 and published reviews before the March 28, 1994 critical date. Microsoft SOF, ¶ 18; Wimsatt Decl. at Ex. 2; First Pizzo Decl. at Ex. 4 (offering a review from the March 15, 1994 edition of PC Magazine, Vol. 13, No. 5, titled "An In-Depth Look, Excel 5.0 Extends Both Features and Usability"). Although alone the reviews would be insufficient to show that Excel 5.0 was on sale prior to the priority date, the magazine reviews further support Defendants' uncontradicted evidence showing that prior sales occurred.

[3] Enfish objects to the admissibility of the "Excel materials" submitted by Defendants in support of their motion. Enfish states that the Excel materials are inadmissible hearsay. The Excel diskettes, user manual, and packaging are self-authenticating documents under FED. R. EVID. 902(7). *See, e.g., ACCO Brands, Inc. v. PC Guardian Anti-Theft Prods., Inc.*, 592 F. Supp. 2d 1208, 1219 (N.D. Cal. 2008). The submitted magazine articles are also self-authenticating under FED. R. EVID. 902(6). Defendants offer testimony establishing Microsoft's press release as a record of a regularly conducted activity, and the press release is thus an exception to the hearsay rule. *See* FED. R. EVID. 803(6). Enfish's attempt to contradict Defendants' evidence as to the release date of Excel 5.0, however, is inadmissible hearsay. Enfish cannot rely on a user edited website to create a factual dispute about the availability date of the Excel product. At best, Enfish's evidence shows that Microsoft Office Professional, a different software product package, was in development in January 1994 and was officially released on June 2, 1994.

Enfish suggests that some possibility exists that the sales made on and before January 6, 1994 were "beta" shipments or sales subject to non-disclosure agreements and the sales are therefore insufficient to qualify as sales under § 102(b). Enfish's blanket statements about being aware of beta testing in the software industry are insufficient to show that the large volume of sales of Excel 5.0 was an experimental use. *See SmithKline Beecham Corp. v. Apotex Corp.*, 365 F.3d 1306, 1317 (Fed. Cir. 2004) ("[O]nce the challenger of the patent has proven by clear and convincing evidence that the invention was in public use before the critical date, the burden of production shifts to the patentee to provide sufficient evidence to create a genuine issue of material fact that the use qualifies as experimental.") In addition, Enfish's statement merely suggests that press may have received beta versions of Excel software prior to the December manufacturing date, which does not create a material issue of fact with respect to the December manufacturing and January sales.

Enfish also makes much of the fact that Excel 5.0 is not a database management technology. But whether Excel 5.0 is equivalent to Enfish's invention, or even analogous art, does not affect the anticipation inquiry. "[T]he question whether a reference is analogous art is irrelevant to whether that reference anticipates." *In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997). The sole question for the Court is whether Excel 5.0 anticipates the *claims* of the '604 and '775 Patents, not the invention as Enfish describes it. *See State Contracting & Eng'g Corp. v. Condotte Am., Inc.*, 346 F.3d 1057, 1068 (Fed. Cir. 2003) ("'[A] reference will [] anticipate if it explicitly or inherently discloses every limitation recited in the claims.'") (citing *In re Schreiber*, 128 F.3d at 1478).

B. Excel 5.0 anticipates every element of method Claims 31, 32, 46, and 47 of the '604 Patent

Each of the asserted method claims of the '604 Patent contain the claim limitations directed to configuring memory "according to a logical table" with (1)

logical rows, each with identifying OIDs and corresponding to a record and (2) logical columns, each with identifying OIDs, and intersecting the logical rows. Excel 5.0 anticipates each of these limitations as well as the row defining column limitation, the text entry limitation, the variable length OID limitation, and the indexing limitation of each respective asserted method claim.

1. All claims: the logical row limitation

Excel 5.0 created database tables in which data was entered, stored, and edited. Microsoft SOF, ¶ 22. Excel 5.0 displayed as a logical table with a plurality of logical rows and logical columns. *Id*. ¶ 15. A row number displayed on the left side of the logical table, and unique primary keys, as shown in the sample Northwind database, could be used to distinguish each row from other rows in the logical table. Microsoft SOF, ¶ 48. In the Northwind table, each row contains a unique primary key as a number corresponding to an ORDER_ID. *Id*. ¶ 15. Each row of the table in the Northwind database corresponds to a record of information for each order recorded in the table. *Id*. The Court construed OID to mean "a unique array of bits assigned to each row and each column in the logical table. The bit length (the number of bits used) is constant throughout a single database but may vary between databases." The unique primary keys and the row numbers meet the requirements of the Court's construction. The ORDER_IDs entered in the Northwind database[4] are each the same length, or number of bits, and each ORDER_ID is unique.[5] The row numbers each require two bytes of storage, and are used to sort and store the row record. Microsoft SOF, ¶¶ 33–40.

[4] The fact that it is the sample database, and not the Excel program itself, does not change the anticipation inquiry. The single prior art reference in this case is the Excel 5.0 product, including the software, user manuals, and tutorial databases.

[5] Enfish's expert asserts that he was able to alter the ORDER_ID in the Northwind database so that two different rows displayed the same ORDER_ID. The altered database, however, is not the prior art reference being considered; the original Excel 5.0 product is.

2. All claims: the logical column limitation

Excel 5.0 displayed as a logical table with a plurality of logical rows and logical columns. Microsoft SOF, ¶ 15. A column letter displayed at the top of the logical table, and unique column headings, as shown in the sample Northwind database, could be used to distinguish each column from other columns in the logical table. *Id*. ¶ 15. The unique column headings and the column numbers meet the requirements of the Court's construction. The column headings of values of successive years are the same bit length, and each heading would be unique. The fact that Excel 5.0 allowed a user to enter both fixed and variable length column headings does not preclude Excel 5.0 from meeting this limitation. It is enough that the prior art system was capable of operating in and was used in a manner that anticipates the claims. *See Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1319 (Fed. Cir. 2009); *Hewlett-Packard Co. v. Mustek Sys., Inc.*, 340 F.3d 1314, 1326 (Fed. Cir. 2003). The column numbers also each require two bytes of storage, and are used to sort and store the row record. Microsoft SOF, ¶¶ 33–40.

Enfish's argument that row and column numbers are not "assigned" to the row records because the row or column number changes as records or columns are added and deleted is inconsistent with the Court's construction. The Court declined to adopt Enfish's construction requiring that the OID be "fixed," and will not interpret the word "assigned" to incorporate a construction it previously rejected.

3. Claim 31: the row defining column limitation

Claim 31 includes the row defining column limitation, "wherein at least one of said logical rows has an OID equal to the OID of a corresponding one of said logical columns, and at least one of said logical rows includes logical column information defining each of said logical columns."

The first part of the row defining column limitation requires that at least one row and at least one column share the same OID. Excel 5.0 featured a pivot table

function, which allowed a spreadsheet column to be created from information entered in a row on the same or a different spreadsheet. *Id*. ¶ 65. Any column created using the pivot table function would share the same unique primary key or header as the row used to create it.

The second part of the row defining column limitation requires that at least one row contain column defining information. Tables in Excel 5.0 allowed a header row to contain column names that defined the type of data entered in each column. Microsoft SOF, ¶ 63. Furthermore, the Northwind database shows a column header row, where row 1 of the table includes column names that define the type of information stored in the column. *Id*. ¶ 64.

4. Claim 46: the variable length OID limitation

Claim 16 instead requires that "said OID's are variable length" (the "variable length OID limitation"). Although the row number and column numbers in Excel 5.0 were constant in length, the primary keys and column headers could be, and were, of variable lengths. The Northwind database shows two tables, an "employee" table using an employee number of three digits (three bytes) as a primary key, and the "order" table using an ORDER_ID of five digits (five bytes) as a primary key. Microsoft SOF, ¶¶ 15, 43, 49–50. The primary keys, which serve as OIDs in the Northwind database, may be of variable length.

5. Claim 47: the indexing limitation

Claim 47 includes the indexing limitation. At Enfish's urging, the Court did not construe the term "indexing" in its Claim Construction Order and instead only construed the required structure for the mean-plus-function limitation. The Court now adopts the plain and ordinary meaning of the term "indexing" as its construction. Indexing therefore requires organizing data to enable searching.

Excel 5.0 includes several indexing tools. The software creates an "Index Record" by generating cell records, each for a limited number of rows, and the index record collects the cell records to allow users to look up particular cells in

the worksheet. Microsoft SOF, ¶ 57. Excel 5.0's auto-filter function allowed a user to select columns, allowing the software to populate a drop down menu. The user selected key words, and Excel filtered and displayed rows containing the selected key words. *Id*. ¶ 58. The "Index" function permitted a user to point to a particular part of the table and rapidly retrieve stored data stored using row and column numbers. *Id*. ¶ 59. Each of these functions organized records or data to allow searching of the table, thereby meeting the indexing limitation.

6. Claim 32: the text entry limitation

Claim 32 depends from Claim 31 and includes the text entry limitation, which requires that one column contains information to determine OIDs from text entry. Excel 5.0 included a find function. By selecting a column and entering text, users could search a column for key words. The Northwind database includes a "ORDER_DATE" column. Using the find function on the ORDER_DATE column to enter a date in the text portion of the query window, returned the row number of the record entry and allowed the user to locate invoice records for that date. Microsoft SOF, ¶ 67. The text entry feature of the find function allowed the use of a column with text entry to locate OIDs.

C. Excel 5.0 anticipates every element of method Claims 31, 32, and 47 of the '775 Patent

Each of the asserted method claims of the '775 Patent contain the claim limitations directed to configuring memory "according to a logical table" with (1) a plurality of cells with a first and second address segment; (2) attribute sets, or columns, including cells with the same second address segment and each with a unique OID; and (3) records, or rows, including cells with the same first address segment and each with a unique OID. These claim limitations are identical to the row and column limitations in every asserted method claim of the '604 Patent, but with the additional requirement of address segments corresponding to row and column location.

Excel 5.0 tables contain cells formed by the intersections of the columns and rows of the logical table. Each cell's location in the table may be identified by row and column numbers. Microsoft SOF, ¶¶ 33–39. In R1C1 formatting, the call address appears as a first segment corresponding to the row number and as a second segment corresponding to the column number. *Id*. The row numbers and column numbers serve as a way to both find and reference a cell in an Excel 5.0 table and therefore function as first and second address segments. *Id*. ¶¶ 36, 38, 40.

Claim 31 includes the row defining column limitation. Claim 32 is dependent on Claim 31 and also adds the text entry limitation. Independent Claim 47 includes the indexing limitation. Excel 5.0 meets each of those additional limitations as discussed above.

D. Excel 5.0 does not anticipate every element of means-plus-function Claims 1, 2, 16, and 17 of the '604 Patent

The Court construed each of the asserted means-plus-function claims as described in Exhibit 19 of Enfish's Opening Claim Construction Brief. Dkt. Nos. 73, Ex. 19 and 86. The Court further construed Claim 17 as described in Exhibit 21 of Enfish's brief. Dkt. No. 73, Ex. 21, 86. "A patented invention is anticipated by a prior art reference if that reference discloses all elements of the claimed invention, including means-plus-function structures or their equivalents." *Regents of Univ. of Minnesota v. AGA Med. Corp.*, 717 F.3d 929, 940 (Fed. Cir. 2013).

The structure required for the "means for configuring" is a general purpose computer or similar device that includes a central processing unit and a memory. Excel 5.0 was designed for, installed on, and used on general purpose computers with at least a processor and memory.

The algorithm required for the "means for configuring" has four steps. Enfish contends that triable issues of fact exist as to the first three steps of the algorithm.

//

Step (1) requires creating a logical table of rows/records and columns/attribute sets capable of storing "different kinds of records" contiguously or discontiguously in computer memory. The construction adopted by the Court states that different types of information entered into different columns constitutes different "kinds" of records. The Northwind database contains different columns, including order numbers, customer numbers, and shipping address. Microsoft SOF, ¶ 15. Further, Excel 5.0 stored data discontiguously in memory. *Id*. ¶ 28. Excel 5.0 performs step (1) of the algorithm.

Step (2) requires assigning fixed or variable length OIDs to rows and columns, where the OIDs stored as data can act as a pointer to the associated row or column. In Excel 5.0 and its samples databases, row numbers and primary keys are assigned to rows, and column numbers and column headings are assigned to columns. Primary keys and column headings may be variable lengths across databases. However, Enfish raises a triable issue of fact that Defendants' evidence does not show the existence of an OID pointer whose value refers directly to an associated row or column.

Step (3) requires storing information about each column in one or more rows, "rendering the table self-referential," and permitting the creation of new column definition rows to append new columns to the table. The presence of a row containing column headers that define the information in the columns may render a table self-referential. Under the Court's construction, a table is rendered self-referential when rows are added to the table that correspond to the data stored in a column. The row of column headers does not correspond to the data stored in one column, and a triable issue of fact remains as to whether Excel 5.0 performs step (3) of the algorithm.

Material issues of facts remains as to whether Excel 5.0 performs steps (2) and (3) of the algorithm for the "means for configuring" of Claims 1, 2, 16, and 17 of the '604 Patent, and those claims are therefore not anticipated.

V. CONCLUSION

Having read and considered the briefs and arguments of the parties, the Court concludes that Claims 31, 32, 46, and 47 of the '604 Patent and Claims 31, 32, and 47 of the '775 Patent are anticipated under 35 U.S.C. § 102 by Microsoft's Excel 5.0 software product. The Court finds that disputed issues of material fact exist as to whether steps (2) and (3) of the algorithm for the configuring step of the means-plus-function Claims 1, 2, 16, and 17 are performed by the Excel 5.0 product.

The Court therefore **GRANTS IN PART** and **DENIES IN PART** Defendants' Motion for Summary Judgment of Anticipation.

IT IS SO ORDERED.

DATED: March 31, 2014

Mariana R. Pfaelzer

Hon. Mariana R. Pfaelzer
United States District Judge