

CARDSOFT, LLC v. VERIFONE, INC., Appeal No. 2014-1135 (Fed. Cir. October 17, 2014).  
Before Prost, Taranto, and Hughes. Appealed from E.D. Tex. (Judge Payne).

Background:

Cardsoft sued VeriFone for infringement of two patents directed to a virtual machine used in payment terminals. The district court construed the claim term "virtual machine" as "a computer programmed to emulate a hypothetical computer for applications relating to transport of data," while not adopting VeriFone's proposed construction to include the limitation that the applications the virtual machine runs *are not* dependent on any specific underlying operating system or hardware. This is important because VeriFone sells payment terminals that run applications that *are* dependent on the underlying operating system or hardware of a payment terminal.

Applying the district court's construction, a jury returned a verdict, in favor of Cardsoft, that VeriFone infringed claims in both patents. VeriFone appealed.

Issue/Holding:

Did the district court err in construing the claim terms "virtual machine?" Yes, reversed.

Discussion:

The Federal Circuit agreed with VeriFone's argument that the district court erred by not adopting VeriFone's proposed construction of "virtual machine."

The Federal Circuit found that when read in light of the specification, prosecution history, and extrinsic evidence, the claimed "virtual machine" is different than the applications that run on the virtual machine. The virtual machine is operating system or hardware dependent because it must communicate directly with the underlying operating system or hardware of a payment terminal. However, the *applications* communicate *directly* with the virtual machine and thus, are not correspondingly dependent on the underlying operating system or hardware. Because VeriFone's application product was operating system dependent (as "effectively conceded" by CardSoft at the district court by CardSoft not arguing against VeriFone's argument), VeriFone did not infringe because its product lacked the claimed "virtual machine."

Cardsoft argued that Cardsoft's claims state that the virtual machine "includes" certain "instructions," and because these instructions are included in the virtual machine, the instructions are also operating system or hardware dependent. The Federal Circuit disagreed and found that this argument improperly conflates the virtual machine *itself* with applications (or instructions) running on the virtual machine. The Federal Circuit also found that such a construction would render "virtual machine," in effect, meaningless.

The Federal Circuit also disagreed with Cardsoft's argument that claim differentiation mandates a broader meaning of the claimed virtual machine. Claim differentiation is a presumption that does not trump the clear import of the specification. In this case, the Federal Circuit held that because the ordinary meaning of "virtual machine" is clear in light of the specification and prosecution history, claim differentiation does not change its meaning.

The Federal Circuit, therefore, reversed the district court's ruling.