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Claim Term “a” Does Not Necessarily Include Singular or Plural

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Eliyahou Harari et al. v. Roger Le, et al, Case No. 10-1075 (Fed. Cir., Sept. 1, 2011) (Moore, J.).

In reviewing an interference decision of the Board of Patent Appeals and Interferences (Board), the U.S. Court of Appeals for the Federal Circuit held that the claim term "a" does not necessarily mean "one or more than one." The court held that construction of the term "a" should be informed by the context of its use in the claims and the specification to determine whether the applicant intended to refer to the singular or plural. *Eliyahou Harari et al. v. Roger Le, et al,* Case No. 10-1075 (Fed. Cir., Sept. 1, 2011) (Moore, J.).

Plaintiff Harari provoked an interference against Lee in order to determine priority of invention between Harari's patent application and Lee's patents. The patents are directed to programming erasable memory arrays for use in computers, in which "bit lines" are accessed in order to activate "memory cells." After the Board held that Harari's claims were not supported by adequate written description, Harari appealed.

The Federal Circuit noted that the issue of whether Harari's claims were supported by adequate written description "turned almost entirely on claim construction." In construing the claims, the Court noted that since Harari provoked an interference against Lee's patent by substantially copying Lee's claim, Harari's claims are to be given their broadest reasonable interpretation in light of Lee's disclosure. To meet the written description requirement, however, Harari's claims as properly construed in light of Lee's disclosure still must be adequately described in the Harari specification.

The Court found that Lee disclosed a one-to-one correspondence between the number of bit lines accessed and memory cells activated. Thus, in Lee, the number of bit lines to be accessed equals the number of memory cells to be activated. As the Court explained, this construction of "a" must be imposed on Harari's claims.

The relevant claim in Harari specified that a bit line activates a number of memory cells. Harari urged that in this claim, the term "a" must necessarily mean "more than one" in order to achieve the one-to-one correspondence between the number of bit lines accessed and memory cells activated as disclosed in the Lee patents. Harari argued that the term "a" in an open-ended claim automatically invokes such a construction.

The Court disagreed, noting that there is not "a hard and fast rule that 'a' always means one or more than one," but that the limitation must be read "in light of the claim and specification to discern its meaning." The Court further explained that "[w]hen the claim language and specification indicate that 'a' means one and only one, it is appropriate to construe it as such even in the context of an open-ended 'comprising' claim" (emphasis added).

The relevant claim in Harari recited a number of control gates, a number of memory cells, and a bit line. The rest of the claim explicitly referred to "said bit line" (i.e., in the singular), but to the "number" of control gates and memory cells in the plural. The Court rejected Harari's argument that the term "a" necessarily meant "more than one," concluding that the "plain

language of the claim clearly indicates that only a single bit line is used when accessing a number of cells" and that the specification was similarly limited.

The Court thus affirmed the Board's holding that the properly construed Harari claims did not have adequate written description in Harari's application, and therefore are not patentable to Harari.

Practice Note: When drafting open-ended claims, applicants should be careful when using the term "a" and consider whether a strict construction of either "one" or "more than one" is likely to be read into the term based on the context of the language of the claim and support in the specification.