IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BEDROCK COMPUTER,	§	
TECHNOLOGIES, LLC	§	
	§	
v.	§	**No. 6:09cv269 LED-JDL**
	§	
SOFTLAYER TECHNOLOGIES,	§	**JURY DEMANDED**
INC., ET AL.	§	
	§	

ORDER

The above entitled civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. The Memorandum Opinion and Order of the Magistrate Judge (Doc. No. 369) ("Opinion"), which contains his construction of disputed terms in U.S. Patent No. 5,893,120 ("the '120 patent"), has been presented for consideration. Defendants[1] move for reconsideration of the Court's Opinion. (Doc. No. 431). Plaintiff Bedrock Computer Technologies LLC ("Bedrock") responded (Doc. No. 481).

In addition, Defendants object (Doc. No. 440) to the Report and Recommendation ("R&R") (Doc. No. 372) of the Magistrate Judge, which contains his recommendation concerning Defendants' Motion for Summary Judgment of Indefiniteness (Doc. No. 283). The Magistrate Judge recommended that Defendants' motion be denied. Bedrock has filed a response. (Doc. No. 479).

I.   Claim Construction Opinion

Having reviewed the parties' submissions, the Court is of the opinion that the Magistrate Judge's construction of the disputed terms is correct, with the following clarifications. In Section VII.A of the Opinion, the Magistrate Judge construed "when the linked list is accessed" to mean

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[1] Defendants joining the motion are Amazon.com Inc., Softlayer Technologies, Inc., Google, Inc., Match.com, LLC, Yahoo! Inc., MySpace Inc., and AOL LLC. (Doc. No. 431).

"both identification and removal of the automatically expired record(s) occurs during the same access of the linked list." (Doc. No. 369) at 21. The Court further noted that the Defendants proffered a construction containing the word "traversal," but the portions of the specification cited by Defendants did not use "traversal." *Id.* at 21, n.24. Although some of the cited portions contain variations of the word "traversal," *see* '120 patent at 5:25-33 ("traversed"), the Court is not prepared to equate "traversal" with "access." Therefore, with respect to "access," the construction of "when the linked list is accessed" remains unchanged.

The Magistrate Judge's construction of "when the linked list is accessed" relied on the language of Claims 3 and 7 and the Defendants' request to order the method steps recited in those respective claims. *See* (Doc. No. 284) at 30. Because claims 3, 4, 7 and 8 are no longer asserted,[2] the issue regarding the ordering of the method steps recited in Claims 3 and 7 is moot.

However, Claims 3 and 7 recite "automatically expired" records, whereas Claims 1 and 5 disclose "expired" records. Therefore, to be precise, the construction for "when the linked list is accessed" should not include "automatically." Further, the language of Claims 1 and 5 already indicate that "both identification and removal of the [] expired record(s) occurs during the same access of the linked list." *See* (Doc. No. 369) at 20-22. Therefore, no further construction is required. Thus, "when the linked list" means "both identification and removal of the expired record(s) occurs during the same access of the linked list."

In addition, the corresponding structure of the means-plus-function term "mea[n]s, utilizing the record search means, for inserting, retrieving, and deleting from the system and, at the same time,

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[2] At the hearing before Magistrate Judge John D. Love on February 16, 2011, the parties represented that these claims are no longer at issue.

removing at least some of the expired ones of the records in the accessed linked list of records," is: CPU 10 and RAM 11 of FIG. 1 and col. 3 lines 52-56 and portions of the application software, user access software or operating system software, as described at col. 4, lines 22-48, programmed with software instructions that provide the insert, retrieve, and delete record capability as described in the flowchart of FIG. 5 and col. 7 line 65 – col. 8 line 32, FIG. 6 and col. 8 lines 33-44, <u>and</u> FIG. 7 and col. 8 lines 45-59, respectively, and/or programmed with software instructions that provide the insert, retrieve and delete record capability as described in the pseudo-code of Insert Procedure (cols. 9 and 10), Retrieve Procedure (cols. 9, 10, 11, and 12), and Delete Procedure (cols. 11 and 12), respectively, and equivalents thereof. *See* (Doc. No. 369) at 42 (emphasis added). The Court replaced the conjunction "or" with "and" between "lines 33-44," and "Fig. 7."

Accordingly, the Court **ADOPTS** the Opinion of the United States Magistrate Judge as the opinion of this Court, with the above clarifying comments. All objections are overruled and all motions for reconsideration are **DENIED**.

II. Report and Recommendation on Summary Judgment for Indefiniteness

Defendants' objections to the Magistrate Judge's R&R simply reiterate the arguments set forth in the summary judgment briefing. Having reviewed the parties' arguments, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, all objections are overruled.

So ORDERED and SIGNED this 8th day of March, 2011.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**