

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE WILLIAM B. SHUBB, JUDGE

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ICONFIND, INC.,

Plaintiff,

vs.

No. Civ. S-09-00109

YAHOO, INC.,

Defendant.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

DEFENDANT'S MOTION FOR CLAIM CONSTRUCTION

MONDAY, DECEMBER 7, 2009

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Reported by: KATHY L. SWINHART, CSR #10150

1 unless there's something else that --

2 MS. KASH: There is one more term that we could
3 probably go through quickly.

4 MR. HAAN: Right.

5 THE COURT: Which is that?

6 MS. KASH: Network page.

7 THE COURT: Oh, network page, right.

8 MR. HAAN: Your Honor, if I could --

9 THE COURT: A page which is part of a network.

10 MR. HAAN: Your Honor, if I could make one more point
11 about categorization label.

12 Once again, the specification says that category
13 assignments can be sent to a search engine. So the invention
14 does not have to include all the category assignments in the
15 label in order to operate.

16 Yahoo's position was that the label itself must
17 expressly indicate every category in order for the invention
18 to operate. But if category assignments are communicated to a
19 search engine as is discussed at column 6 and line 55, then
20 the search engine already has those category assignments in
21 its database. And if someone uses the search engine to find a
22 particular page, it can use that information that the search
23 engine has, and then it can use whatever category assignments
24 are expressly included in the label.

25 THE COURT: Why do you think the Court needs to define

1 page?

2 MR. HAAN: We do not, Your Honor.

3 THE COURT: You do not. Why does Yahoo think the
4 Court needs to define page?

5 MR. HAAN: One thing I wanted to point out, Your
6 Honor, was that Yahoo has changed its position halfway through
7 the briefing on this term. In its opening brief, if we turn
8 to page 20, it has offered its construction for the whole term
9 "network page" including both words. In its response brief it
10 offered its construction only for the term "page" and said
11 that it agreed with IconFind's construction of the term
12 "network."

13 It did not inform IconFind of this change in its
14 position. Quite frankly we think it's unfair and also
15 implicates new claims because the term "network page" together
16 shows up in Claims 1, 30 and 31, and the term "page" by itself
17 shows up in Claims 19, 22 and 28.

18 THE COURT: Okay. So, Ms. Kash, why do you think the
19 Court needs to define page?

20 MS. KASH: Well, Your Honor, we think that you need to
21 define page because the manner in which the plaintiff is
22 asserting its patent against Yahoo, who uploads and assigns to
23 the extent any categories are assigned to photographs, and
24 Flickr as we discussed earlier today only applies user
25 selected settings to uploaded photographs, not to an entire

1 network page.

2 And we did not seek to redefine page in and of itself.
3 We were simply stating in our reply brief that we don't
4 disagree as to what constitutes a network. We can all agree
5 on what's a network. The issue here is what are you talking
6 about when you say page? Because what the plaintiff wants to
7 have happen is to expand this patent to cover things, simply a
8 photograph, where a network page is what the categories this
9 whole patent are being assigned to.

10 THE COURT: Did I get this backwards? Because it
11 looks like you're the one asking to define as files, data and
12 information presented when a network address is accessed
13 including any text, audio, advertising, images, files,
14 graphics or graphical user interface. Wouldn't that confuse
15 the jury into thinking that an audio, an advertisement, an
16 image or a graphic could be a page?

17 MS. KASH: What it is is anything that is -- there's a
18 difference in this patent between the fact that -- there's
19 very clear language that when something is being -- a category
20 is assigned to the network page versus a category assigned to
21 material on the page.

22 THE COURT: Right.

23 MS. KASH: They're arguing that the photograph itself,
24 in and of itself constitutes -- can constitute a network page.
25 And we're saying no, no, no, the network page is the whole

1 thing. Everything that's found in an IP address, everything
2 that's located on that, that is the page and that that is not
3 something -- so that when you -- Yahoo does not categorize the
4 IP address itself. It doesn't do that. It doesn't categorize
5 all the stuff that's found at a network page or a web page,
6 however you want to define it in common Internet usage.

7 THE COURT: Okay. Let me ask you then, Mr. Haan, the
8 patent uses the term "material on a page."

9 MR. HAAN: Right.

10 THE COURT: Is it your position that page could be an
11 image which is found on a web page?

12 MR. HAAN: That the image itself constitutes a network
13 page?

14 THE COURT: Yeah. Is that your position?

15 MR. HAAN: No, that's not our position.

16 THE COURT: Okay.

17 MR. HAAN: Our position is you assign the page based
18 on the material that's on the page, but that doesn't
19 necessarily include all files, data and information. If you
20 look at a website, it may have the logo of a company. And if
21 we include Yahoo's proposed construction and you look at it in
22 the context of the claims, it says assigning said network
23 page.

24 THE COURT: Well, we can get to the question of
25 whether this is an infringement or not later on. But for

1 right now it seems that you're both in agreement that the
2 image that's on a page is not a, quote, page, unquote. It's
3 material on a page. And so we should simply define -- page
4 doesn't need to be defined. It seems that we should just
5 define network page in order to define what a network is.
6 Network page is a page on the Internet, a private corporate
7 network, intranet, local area network or other network.

8 MR. HAAN: Yes. That's our position, Your Honor.

9 THE COURT: What's wrong with that since nobody is
10 going to take the position that an image on a page is a page
11 in and of itself?

12 MS. KASH: If that is an admission that we have from
13 plaintiff and Your Honor is accepting of it, then network page
14 is fine.

15 THE COURT: All right. Well, if you want to just --
16 we can put it on the record. You do not claim that an image
17 which is on a page is a, quote, page, unquote, itself.

18 MR. HAAN: An image itself, in and of itself the image
19 file is not a page.

20 THE COURT: All right.

21 MS. KASH: Thank you.

22 THE COURT: Okay.

23 MR. HAAN: So I guess I don't understand what the
24 construction of this term is. There is no construction?

25 THE COURT: No, there will be a construction. But I

1 don't think we need to define the word "page" because
2 everybody understands what it means. It doesn't mean an
3 image, it means a page.

4 MR. HAAN: Right.

5 THE COURT: It's got a common definition, a web page
6 or a network page.

7 MR. HAAN: Right.

8 THE COURT: Right.

9 MS. KASH: Thank you, Your Honor.

10 THE COURT: Okay. Anything else?

11 MR. HAAN: Not unless Your Honor has any further
12 questions.

13 THE COURT: No. This is interesting. I've enjoyed
14 the discussion.

15 MS. KASH: Thank you, Your Honor.

16 THE COURT: The matter is taken under submission.

17 (Proceedings were concluded at 3:56 p.m.)

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I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/ Kathy L. Swinhart
KATHY L. SWINHART, CSR #10150