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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUN MICROSYSTEMS, INC.,

No. C-07-05488 EDL

Plaintiff,

**ORDER FOLLOWING CLAIM
CONSTRUCTION HEARING**

v.

NETWORK APPLIANCE, INC.,

Defendant.

On November 24, 2008, the Court held a hearing to construe the disputed terms of United States Patent Numbers 7,313,720 (the “’720 patent”) and 6,868,417 (“’417 patent”) (collectively, “NetApp patents”) pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). The Court granted leave for Sun to address Intirtool, Ltd. v. Texar Corp., 369 F.3d 1289 (Fed. Cir. 2004), raised by NetApp during oral argument. The Court also ordered the parties to submit simultaneous briefs, of no more than five pages in length, addressing the following issues in the context of the ’720 patent: incorporation of other patents by reference; and whether only part of a preamble can act as a claim limitation. The parties are further ordered to meet and confer and then file a joint letter regarding a construction of the term “increas[ed/ing] a number of persistent consistent point images” in the ’720 patent (if the Court does decide to construe it) to include an “any number of PCPIs” limitation. See, e.g., Halliburton Energy Services, Inc. v. M-I LLC, 514 F.3d 1244, 1253 n.5 (Fed. Cir. 2008).

At the hearing, the parties proposed, in principle, a joint construction of “inode” in the ’417 patent, and Sun proposed the addition after “data blocks” of the phrase “of a file.” The Court agrees

1 with Sun's addition. The Court proposes very slightly reordering the wording as follows: a "file
2 system structure for pointing directly or indirectly to data blocks of a file, including blocks that only
3 include metadata." The parties shall alert the Court if, after meeting and conferring, the reordering
4 raises any unintended concerns.

5 The parties shall file the supplemental briefs and joint letter by Wednesday, December 3,
6 2008.

7 **IT IS SO ORDERED.**

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9 Dated: November 25, 2008

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge

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