

United States District Court
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SIMPLEAIR, INC.

§

v.

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Case No. 2:09-cv-289

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AWS CONVERGENCE
 TECHNOLOGIES, INC., ET AL.

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SUPPLEMENTAL ORDER ON SIMPLEAIR’S MOTION TO EXCLUDE
CERTAIN OPINIONS OF DR. STEPHEN WICKER

In preparation for the trial in this case, Plaintiff filed its *Daubert* Motion to Exclude Certain Opinions of Dr. Stephen Wicker (Doc. No. 348). The Court recently issued an order DENYING the motion (Doc. No. 507). The Court now issues this supplemental order to clarify its ruling.

Plaintiff seeks to exclude portions of Dr. Wicker’s testimony on the basis that his opinion contradicts the Court’s *Markman* order. Specifically, Plaintiff argues that Dr. Wicker improperly equates a “data channel” with a mere network connection, such as a connection to the Internet. Apple responds that Dr. Wicker’s report and deposition testimony correctly applies the Court’s construction. Instead, Apple insists that Plaintiff has lifted Dr. Wicker’s deposition testimony out of context. Apple cites to several examples of Dr. Wicker’s testimony that are consistent with the Court’s construction.

As previously ruled, the motion is **DENIED**. The Court, in its *Markman* opinion, construed “data channel” to mean “one or more communication channels or paths for accessing or viewing a category or subcategory of information that is provided by an information source over a communications network.” All witnesses—including Dr. Wicker—must adhere to the Court’s construction.

But the Court notes that at times during his deposition, Dr. Wicker appears to deviate from the Court's construction, or at the very least is vague about the distinction between a connection *to* a network and a connection to a data channel *over* a network. For example, Dr. Wicker testified that "[i]f you turn on your iPhone, you will be online to the Internet. . . . You will then be able to communicate over a collection of paths with any website that is active and reachable on the Internet. So there will be a data channel between . . . your iPhone . . . and any website that's providing data on the Internet." Defendant clarifies through citations to other deposition excerpts that Dr. Wicker's opinion is that a data channel is a connection "over the Internet extending from the device *all the way to the source of the notification.*" Def.'s Resp. Doc. No. 380 at 2.

Accordingly, Dr. Wicker will be allowed to testify regarding this portion of his opinion. But Dr. Wicker *will not* be allowed to testify in a manner suggesting that a mere network connection is a data channel or otherwise misleads or confuses the jury on the construction of the term "data channel."

It is SO ORDERED.

SIGNED this 4th day of April, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE