

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

**BEDROCK COMPUTER
TECHNOLOGIES LLC,**

Plaintiff,

v.

**SOFTLAYER TECHNOLOGIES, INC.,
et al.**

Defendants.

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CASE NO. 6:09-cv-269-LED

Jury Trial Demanded

JOINT CLAIM CONSTRUCTION AND PRE-HEARING STATEMENT

Plaintiff Bedrock Computer Technologies LLC (“Bedrock”) and Defendants Softlayer Technologies, Inc. (“Softlayer”), Google Inc. (“Google”), Yahoo! Inc. (“Yahoo!”), MySpace Inc. (“MySpace”), Amazon.com Inc. (“Amazon.com”), Match.com, LLC (“Match.com”) and AOL Inc. (“AOL”) (collectively “Defendants”), submit this Joint Claim Construction and Prehearing Statement in accordance with Patent Rule 4-3. Section I lists the claim terms for the patent-in-suit (U.S. Patent No. 5,893,120 or “the ’120 patent”) for which the parties have agreed on a joint construction. Section II and Exhibit A contain Bedrock’s proposed constructions for the disputed terms, along with supporting intrinsic and extrinsic evidence. Section III and Exhibit B contain Defendants’ proposed constructions for the disputed terms, along with supporting intrinsic and extrinsic evidence. Section IV is a summary of expert testimony that Bedrock may offer at the claim construction hearing. Section V is a summary of expert testimony that Defendants may offer at the claim construction hearing. Section VI contains the parties’

contentions regarding the length of the claim construction hearing. Section VII contains the parties’ statement of any issues to be taken up at a pre-hearing conference.

I. Terms Proposed for Construction on Which the Parties Have Reached Agreement

As reflected in the parties’ proposed constructions, the parties have reached agreement on certain portions of the proposed constructions and have narrowed the disagreement on the disputed constructions for the Court. Although the parties have not reached complete agreement on the construction of the claim terms in dispute, they have agreed that some of the claim terms are in the “Means-Plus-Function” format and are subject to construction according to 35 U.S.C. §112, ¶ 6. The following table lists the claim elements to which the parties have agreed on a construction and the claim elements that the parties agree should be construed pursuant to 35 U.S.C. §112, ¶ 6 .

Term, Phrase, or Clause	Agreement
External Chaining	“a technique for resolving hash collisions using a linked list(s)”
a record search means utilizing a search key to access the linked list [Claim 1]	35 U.S.C. §112, ¶ 6
a record search means utilizing a search key to access a linked list of records having the same hash address [Claim 5]	35 U.S.C. §112, ¶ 6
a hashing means to provide access to records stored in a memory of the system and using an external chaining technique to store the records with same hash address, at least some of the records automatically expiring	35 U.S.C. §112, ¶ 6

Term, Phrase, or Clause	Agreement
[Claim 5]	
means for identifying and removing at least some of the expired ones of the records from the linked list when the linked list is accessed [Claim 1]	35 U.S.C. §112, ¶ 6
means for identifying and removing at least some expired ones of the records from the linked list of records when the linked list is accessed [Claim 5]	35 U.S.C. §112, ¶ 6
means, utilizing the record search means, for accessing the linked list and, at the same time, removing at least some of the expired ones of the records in the linked list [Claim 1]	35 U.S.C. §112, ¶ 6
means, utilizing the record search means, for inserting, retrieving, and deleting records from the system and, at the same time, removing at least some expired ones of the records in the accessed linked list of records [Claim 5]	35 U.S.C. §112, ¶ 6
means for dynamically determining maximum number for the record search means to remove in the accessed linked list of records [Claims 2 and 6]	35 U.S.C. §112, ¶ 6

II. Bedrock's Proposed Claim Constructions and Supporting Evidence

In the chart attached as Exhibit A, Bedrock proposes constructions for the disputed claim terms and identifies intrinsic and extrinsic evidence upon which it may rely to support its proposed constructions of the '120 patent. In addition to the intrinsic and extrinsic evidence identified by Bedrock, Bedrock reserves the right to rely on any intrinsic or extrinsic evidence identified by Defendants in support of its proposed constructions. Bedrock may also rely upon intrinsic and extrinsic evidence, including the prosecution history, to rebut the constructions proposed by Defendants.

III. Defendants' Proposed Claim Constructions and Supporting Evidence

In the chart attached as Exhibit B, Defendants propose constructions for the disputed claim terms and identifies intrinsic and extrinsic evidence upon which they may rely to support their proposed constructions of the '120 patent. The Defendants rely on the intrinsic evidence as a whole relating to the '120 Patent, including the claim language, the specification and figures, the file history, and the references cited on the face of the patent. In Exhibit B, Defendants cite to specific figures and text as examples of intrinsic evidence to support proposed constructions to particular claim elements but further state that the cited evidence is applicable to all claim elements identified in Exhibit B. In addition to the intrinsic and extrinsic evidence identified by Defendants, Defendants reserve the right to rely on any intrinsic or extrinsic evidence identified by Bedrock in support of its proposed constructions, and any evidence obtained, or that may be obtained, through claim construction discovery. Defendants may also rely upon intrinsic and extrinsic evidence, including the prosecution history, to rebut the constructions proposed by Bedrock. Defendants expressly reserve the right to amend, correct, or supplement their claim

construction positions and supporting evidence in response to any change of position by Bedrock, in response to information received during claim construction discovery, or for other good cause.

IV. Summary of Expert Testimony that Bedrock May Offer at the Claim Construction Hearing

Although Bedrock does not contend or concede that expert testimony is necessary, Bedrock may submit a supporting Declaration of Dr. Mark Jones at the time it files its claim construction brief. Dr. Jones will confirm that the terms should be construed as proposed by Bedrock, and would support his opinions based on the claims, the written description, and the prosecution history of the '120 patent, upon the level of skill of one of ordinary skill in the art, and upon what was common knowledge at the time of the invention. Dr. Jones may also rely upon some or all of the extrinsic evidence identified by Bedrock in its Preliminary Claim Constructions and Citations to Extrinsic Evidence. A copy of the curriculum vitae of Dr. Jones is attached hereto as Exhibit C.

V. Summary of Expert Testimony that Defendants May Offer at the Claim Construction Hearing

To the extent that Bedrock submits a supporting expert Declaration or puts forth an expert witness at the claim construction hearing or as Defendants deem necessary to assist in explaining the technology and/or the '120 patent, Defendants will put forth expert witnesses, Dr. Peter Alexander and/or Dr. Kevin Jeffay, to support their claim construction positions and refute the positions set forth by Bedrock. Defendants anticipate that Dr. Alexander and/or Dr. Jeffay will testify regarding the level of ordinary skill in the art required to practice the alleged invention and the common knowledge of one of ordinary skill in the art at the time that the '120

patent was filed. Defendants further anticipate that Dr. Alexander and/or Dr. Jeffay will testify regarding the proper construction of the terms of the asserted claims based on the plain meaning of the claim language, the specification, the file history, and other intrinsic and extrinsic evidence identified by Defendants in Exhibit B. Defendants further anticipate that Dr. Alexander and/or Dr. Jeffay will provide testimony regarding the indefiniteness of certain claim terms pursuant to 35 U.S.C. § 112 in light of the specification and the knowledge of one of ordinary skill in the art.

VI. Length of the Claim Construction Hearing

The parties anticipate that the Claim Construction Hearing will require one day.

VII. Issues for Prehearing Conference

The parties do not currently have any issues that need to be taken up with the Court at a prehearing conference.

Date: July 26, 2010.

Respectfully submitted,

/s/ J. Austin Curry (with permission)

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CERTIFICATE OF SERVICE

The undersigned certifies that, on July 26, 2010, the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Todd Briggs _____

Todd Briggs