

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

TYLER DIVISION

DATE: 10/7/10

JUDGE
JOHN LOVE

REPORTER: Kimberly Julian
LAW CLERK: Anna Phillips

<p>BEDROCK TECHNOLOGIES Plaintiff</p> <p>vs.</p> <p>SOFTLAYER TECHNOLOGIES, ET AL Defendant</p>	<p>CIVIL ACTION NO: 6:09cv269</p> <p>MARKMAN & MOTIONS HEARING (Document # 217, 246, 259, 263, 270, 271 & 283)</p>
---	---

ATTORNEY FOR PLAINTIFF	ATTORNEY FOR DEFENDANT
Doug Cawley Jason Cassady Chris Bunt Austin Curry	Henry Lien Claude Stern Yar Chaikovsky Steve Gardner Mike Newton Todd Bridges

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 1:33 pm

ADJOURN: 5:06 pm

TIME:	MINUTES:
1:33 pm	Case called. Parties announced ready to proceed.
1:33 pm	The Court greeted the parties and stated we are here on a markman and discovery motions. The Court will take up motion #217 and 263.
1:33 pm	Mr. Cassady asked if he could have the courtroom cleared that is not considered highly confidential officers. He asked that these motions be sealed as attorneys eyes only.
1:37 pm	Mr. Briggs stated he would like to have these motions be taken on the paper.
1:38 pm	The Court will allow all parties to come back into the courtroom.

FILED: 10/07/10

DAVID J. MALAND, CLERK

BY: *Mechele Morris*, Courtroom Deputy

TIME:	MINUTES:
1:38 pm	Mr. Cawley began argument on plaintiff's Motion to Compel, #271. Discussion made on obtaining discovery regarding matter not privileged that is relevant to the claim or defense of any party.
1:41 pm	Mr. Cawley began argument on plaintiff's Motion to Compel, #246 and Motion to Compel #270. Discussion made on interrogatories needing further responses. Discussion made on revenues and needing information and damages.
1:47 pm	Mr. Stern responded and argued motions on behalf of the defendant. Discussion made on the chronology inaccuracies made by the plaintiff. Argument made regarding interrogatories and revenues.
1:53 pm	The Court is needing to hear about what evidence will be admissible in regards to value of accused features and revenue. The Court stated they need to produce something for plaintiff to enable information.
1:56 pm	Mr. Stern responded. He is in agreement with the Court. Discussion made on what they have produced. Mr. Stern discussed the causation. They would like the theory from the plaintiff and then they will dig deep into the records. They produced their source code and their expert can evaluate.
2:01 pm	Mr. Cawley responded as to identifying the codes that they produced. Discussion made on the proposition. Mr. Cawley discussed the infringement contentions and has no objections to a deadline. They can do this in a week.
2:06 pm	Mr. Newton responded. They have produced the cost of the servers. Discussion made on the cause of connection. Argument made on the discovery on the motions. They are going back to look if there was a denial of service. They are refusing to produce certain revenue at this time.
2:10 pm	The Court questions Mr. Cawley regarding Google as to businesses units using any accused version of Linux.
2:10 pm	Mr. Cawley responded. He further argued motions. Further discussion on business units and revenue.
2:11 pm	Mr. Stern responded. Further discussion made on motions and denial of service attacks.
2:14 pm	Mr. Cawley further responded. Further discussion made on the denial of service attacks. Mr. Cawley further argued business units and servers executing accused version of Linux.
2:16 pm	Mr. Stern responded and further discussed their answer to interrogatory #5. Their question is interrogatory #6 to the plaintiff. There is a theory but no facts from the plaintiff.
2:19 pm	Mr. Cassidy responded and discussed their response to defendant's interrogatory #6.

TIME:	MINUTES:
2:20 pm	The Court is granting both motions to Google, Match and My Space on the financial information that has been requested. The Court also granted the motion for Bedrock to respond to the interrogatory propounded to them. The Court order that the supplemental pics to be specifically directed as to each defendant and how each defendant operates. This is to take place in a week. Again, The Court ruled that the financial documents from My Space and financial interrogatories need to be answered, answer the interrogatories and supplement pics. The Court granted the My Space motion on the financials, denied at this time on the remainder, but without prejudice on bringing a renewed motion if necessary.
2:23 pm	Mr. Cawley responded. Discussion made on needing documents to be produced to them. They will take a 30b6 deposition of the document custodian.
2:26 pm	Recess for 10 minutes. The Court will go into the claim construction after break.
2:41 pm	Court resumed. The Court further discussed the infringement contentions. The Court asked if there were any issues that need to be taken up.
2:42 pm	Mr. Curry stated they have supplemented their pics through interrogatory responses.
2:43 pm	Mr. Stern responded. Google has not received supplemental interrogatory response.
2:43 pm	Mr. Curry responded.
2:44 pm	Mr. Chaikovsky responded.
2:44 pm	Mr. Stern further responded as to interrogatories.
2:45 pm	The Court directed that the supplementation.
2:45 pm	Mr. Newton responded.
2:46 pm	The Court would like to move on to the claim construction.
2:47 pm	Mr. Cassidy discussed an agreement as to a claim term. There is agreement as to “link list to store and provide access to records”. He gave the agreement as to the term. There is also an agreement to claim term “identifying and removing at least some of the expired ones of the records from the linked list when the linked list is accused”. He gave the agreement as to the term. There is no construction necessary as to this term.
2:52 pm	Mr. Cassidy began argument on proposed construction claim term “automatically expiring” on behalf of the plaintiff. Discussion made on the specification. Defendants seek to import limitations without showing that the patentee acted as a lexicographer or disclaimed claim scope and attempts to read in limitations of the preferred embodiment.
2:57 pm	Mr. Chaikovsky gave a brief overview of the patent in suit. Storage must be reclaimed and fast access to the data maintained as expired records are removed. Discussion made on technique of removal. Summary given of the alleged solution of the ‘120 patent.
3:02 pm	Mr. Chaikovsky began argument on proposed claim construction term “automatically expired” terms. Automatically expiring requires a comparison to an external condition. The named inventor testified that a record automatically expires based on an external condition.

TIME:	MINUTES:
3:09 pm	Mr. Chaikovsky responded. Further discussion on the specification.
3:10 pm	Mr. Gardner began argument on proposed construction claim term “removing” on behalf of the defendant. The “removing” does require deallocation of the memory occupied by the records. Discussion made on the occupation of memory by expired records. Discussion made on the specification and pointer adjustment. Reclamation of storage is deallocation. Removing requires deallocation. Plaintiff’s construction adds test to the claim language, attempts to read in a limitation and contradicts the patent.
3:25 pm	Mr. Curry began argument on “removing” on behalf of the plaintiff. No construction is necessary. Jury will be able to understand. The defendants attempt to read the goal of the patent into the claims. The specification contradicts defendants construction.
3:27 pm	Mr. Curry began argument on proposed claim construction term “dynamically determining maximum number of expired one of the records to remove when the linked list is accessed”.
3:29 pm	Mr. Chaikovsky began argument on term on behalf of the defendants. Defendant believe the maximum number requires that a single number serves as an upper limit. Plaintiff fails to construe “maximum number”. Defendants believe the dynamic determination occurs immediately before the linked list is traversed. The specification describes factors to be considered in making the dynamic determination immediately before the linked list is traversed. Dynamic determination cannot occur during the traversal because the maximum can be exceeded before it is determined.
3:47 pm	Mr. Curry began argument on behalf of the plaintiff on term. Defendants support comes from the preferred embodiment. The preferred embodiment gives an example of dynamic determination. The inventor did not act as his own lexicographer during the prosecution of the patent and define “maximum number”.
3:50 pm	Mr. Chaikovsky began argument on proposed claim construction term “identifying and removing when the linked list is accessed”. The claim language requires both the “identifying and removing” of expired records from the linked list when the linked list is accessed and accessing the linked list of records. The means and methods claimed in the patent require identifying and removing when the linked is accessed.
4:00 pm	Mr. Curry began argument on term on behalf of the plaintiff. No construction is necessary as to the method step. The jury will be able to understand the term.
4:06 pm	Recess.
4:24 pm	Court resumed. Mr. Cawley began discussion on 112.6 terms. Discussion made on the legal framework of 112.6. Discussion made on “hashing means to provide”. The recited function is not executing a hashing function.
4:33 pm	Mr. Stern began discussion on the indefinite terms. The corresponding structure for a 112.6 claim for a computer implemented function is the algorithm disclosed in the specification. The pseudocode provides no algorithm for hashing. Discussion made on plaintiff’s response to summary judgment, footnote 1.
4:50 pm	Mr. Cawley began argument on “a record search means”. The structure does not need its own algorithm. The hash function disclosed in the patent is adequately bounded.

TIME:	MINUTES:
4:58 pm	Mr. Stern responded. Further discussion made on “means for identifying and removing”.
5:03 pm	Mr. Cawley responded.
5:04 pm	Mr. Chaikovsky provided language regarding ultimate construction of terms “dynamically” and “maximum number”.
5:06 pm	The Court will consider the arguments.
5:06 pm	There being nothing further, Court is adjourned.