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

BEDROCK COMPUTER	§	
TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	
	§	**CASE NO. 6:09-cv-269-LED**
v.	§	
	§	**Jury Trial Demanded**
SOFTLAYER TECHNOLOGIES, INC.,	§	
et al.	§	
	§	
Defendants.	§	

PLAINTIFF BEDROCK COMPUTER TECHNOLOGY LLC'S NOTICE OF COMPLIANCE REGARDING COURT'S ORDER TO MEET AND CONFER REGARDING CLAIM CONSTRUCTIONS

Plaintiff Bedrock Computer Technologies LLC ("Bedrock") hereby notifies the Court

that it has complied with the Court's order on October 7, 2010 during the *Markman* hearing that

parties meet and confer regarding the construction of "dynamically determining" term and advise

the Court regarding any agreement over particular constructions. On October 21, 2010, counsel

for Bedrock, Amazon, Softlayer, Yahoo, MySpace, and AOL met and conferred to discuss

potential constructions for certain claim terms within claims 4 and 8 of the patent subject to

construction: U.S. Patent No. 5,893,120. On the phone were Austin Curry for Bedrock, Russ

Korn and Dru Montgomery for Softlayer and Amazon, and Marissa Ducca for MySpace and

AOL. During the call, the parties discussed two proposed constructions that are not briefed

before the Court.

The first construction conferred by the parties was Defendants' proposed construction

that includes the following language: "where the determination is based on factors such as how

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much memory is available in the system storage pool, general system load, time of day, and the

number of records currently residing in the information system." Bedrock expressed that it does

not oppose this additional language so long as the examples given are not an exhaustive list of

the factors that could be used in making a dynamic determination.

The second construction conferred by the parties was Bedrock's proposed construction of

an ordering of the steps of claim 3 with respect to claim 4 and the steps of claim 7 with respect to

claim 8. (Claims 4 and 8 are dependent on method claims 3 and 7 and therefore require the

performance of an additional step.) Specifically, Bedrock proposed the following constructions

for the ordering of these method steps: The step of method claim 4 is performed before the

"removing" step of claim 3 that is the object of the determination, and the step of method claim 8

is performed before the "removing" step of claim 7 that is the object of the determination.

Bedrock proposed this as a compromise to the Defendants' construction for "dynamically."

During the *Markman* proceedings, the Defendants advocated for construing "dynamic" to mean

"prior to traversing the linked list" based on the logic that the "determining" of claims 4 and 8

must perform before the "accessing" step of claims 3 and 7. Logic only demands, however, that

the "determining" step be performed before the "removing" step that is the object of the

determination.

As the Defendants rejected Bedrock's proposed compromise, the following table reflects

the parties respective proposed constructions:

Claims	Disputed Claim Terms	Defendants' Proposed Construction	Bedrock's Proposed Construction
4. The method according to claim 3 further including the step of **dynamically** determining maximum number of expired ones of the records to remove when the linked list is accessed. 8. The method according to claim 7 further including the step of **dynamically** determining maximum number of expired ones of the records to remove when the linked list is accessed.	Defendants propose that the entire step needs construction. Bedrock proposes that the term "dynamically" needs construction as well as the ordering of the steps of claims 4 and 8 with respect to claims 3 and 7.	Immediately before the linked list is traversed, determining a single number that serves as an upper limit on the number of records to remove while the linked list is traversed OR Prior to traversing the linked list, determining a single quantity that serves as an upper limit on the number of expired records to remove, where the determination is based on factors such as how much memory is available in the system storage pool, general system load, time of day, and the number of records currently residing in the information system.	"dynamically" means "during program execution" Ordering of the Steps: The step of method 4 is performed before the "removing" step of claim 3 that is the object of the determination. The step of method 8 is performed before the "removing" step of claim 7 that is the object of the determination.

DATED: October 22, 2010

Respectfully submitted,
McKOOL SMITH, P.C.

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**ATTORNEYS FOR PLAINTIFF
BEDROCK COMPUTER
TECHNOLOGIES LLC**

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<u>CERTIFICATE OF SERVICE</u>

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the forgoing document via the Court's CM/ECF system pursuant to the Court's Local Rules this 22nd day of October, 2010.

/s/ J. Austin Curry
J. Austin Curry