

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BEDROCK COMPUTER
TECHNOLOGIES LLC,

Plaintiff,

v.

SOFTLAYER TECHNOLOGIES, INC., et
al.,

Defendants.

CASE NO. 6:09-CV-00269

Hon. Leonard E. Davis

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO STAY THIS ACTION AND DISMISS AMENDED
CLAIMS PENDING REEXAMINATION OF U.S. PATENT NO. 5,893,120**

INTRODUCTION

This is not a typical motion for stay pending reexamination. Instead, this is a unique situation where the Plaintiff, Bedrock Computer Technologies, LLC (“Bedrock”), has amended claims during reexamination proceedings before the United States Patent and Trademark Office (“PTO”) and, at the same time, is pursuing the original claims in this action.

In the reexamination, the PTO rejected all eight claims of the ‘120 patent as invalid over four prior art references. Last month, Bedrock responded to the rejection by amending two claims. These amendments have forever changed the scope of the patent’s claims and include a claim limitation that Bedrock attempted to read into the claims during the claim construction proceedings – a limitation that this Court rejected in its Provisional Claim Construction Order. Bedrock nevertheless continues to assert the original claims in this litigation.

Allowing Bedrock to go forward with its original claims in this action when it has amended those same claims in the reexamination will serve no purpose and will merely waste the Court’s and the parties’ time and resources. Indeed, when faced with similar circumstances, this Court stayed an action, concluding that “[i]t would be an egregious waste of both the parties’ and the Court’s resources if the *Markman* and summary judgment proceedings went forward and the claims were subsequently declared invalid or were amended as a result of the reexamination proceeding.” *EchoStar Techs. Corp. v. TiVo, Inc.*, No. 5:05-CV-81 (DF), 2006 U.S. Dist. LEXIS 48431, at *3 (E.D. Tex. July 14, 2006). Here, the Court should not only stay the proceedings, but dismiss the amended claims because they have been effectively abandoned by Bedrock in the reexamination proceedings. No authority supports trial over non-existent claims.

Bedrock has also added four new claims in the reexamination proceedings. Bedrock may attempt to assert the new claims in addition to the amended claims against the defendants in a separate lawsuit in the future. Such duplicative litigation between *the same parties on the same*

patent would be wasteful for the Court and all parties involved and would be highly prejudicial to the defendants. Bedrock should not be permitted to take two bites of the apple.

Bedrock will not be prejudiced by a stay. Discovery in this case has not been completed, a final claim construction order has not been issued, expert reports have not been exchanged, and summary judgment motions have not been filed. Further, Bedrock does not manufacture or sell any products, and it has not sought preliminary injunctive relief. Staying the present action would promote judicial economy, avoid inconsistent results, and ensure that there will be only one trial between Bedrock and the defendants on the ‘120 patent. Consequently, the defendants respectfully submit that the Court should stay the proceedings in this action pending completion of the reexamination of the ‘120 patent.

PROCEDURAL BACKGROUND

The Lawsuit. Bedrock filed its complaint on June 16, 2009, alleging that the defendants infringe all eight claims of the ‘120 patent. Dkt. No. 1. Bedrock, a Texas corporation with its principal place of business in Tyler, Texas, has no apparent business other than patent litigation. The seven defendants remaining in this lawsuit are Softlayer Technologies, Inc., Google Inc., Yahoo! Inc., MySpace Inc., Amazon.com Inc., Match.com, LLC and AOL Inc.¹

The Reexamination. In February 2010, a third party filed a request for an *ex parte* reexamination of the ‘120 patent, based on four prior art references. *See* Declaration of Todd M. Briggs (“Briggs Decl.”), ¶ 3, Ex. 1. On July 23, 2010, the PTO issued an office action rejecting all eight claims of the ‘120 Patent as invalid in view of those references. *Id.* at ¶ 4, Ex. 2. On September 13, 2010, Bedrock requested a two-month extension of its time to respond to the

¹ There is a second lawsuit before this Court involving the ‘120 patent, *Red Hat, Inc., v. Bedrock Computer Technologies LLC* (Case No. 6:09-CV-549 LED/JDL), which includes approximately 14 cross-claim defendants accused of infringing the ‘120 patent.

Office Action. *Id.* at ¶ 5, Ex. 3. The PTO granted the requested extension on September 23, 2010. *Id.* at ¶ 6, Ex. 4.

After participating in an in-person interview with a three-member panel of PTO examiners on November 19, 2010, Bedrock amended two of the four independent claims, added four new claims, and argued that all of these claims were patentable despite the four prior art references in its November 23, 2010 response to the PTO's rejection of all claims of the '120 patent. Briggs Decl. ¶ 7, Ex. 5. Bedrock's amended Claims 3 and 7 are as follows (new limitations are underlined):

Claim 3: (Amended) A method for storing and retrieving information records using a linked list to store and provide access to the records, at least some of the records automatically expiring, the method comprising the steps of:

accessing the linked list of records to search for a target record,
identifying at least some of the automatically expired ones of the records while searching for the target record, and
removing at least some of the automatically expired records from the linked list when the linked list is accessed.

Claim 7: (Amended) A method for storing and retrieving information records using a hashing technique to provide access to the records and using an external chaining technique to store the records with same hash address, at least some of the records automatically expiring, the method comprising the steps of:

accessing a linked list of records having same hash address to search for a target record,
identifying at least some of the automatically expired ones of the records while searching for the target record,
removing at least some of the automatically expired records from the linked list when the linked list is accessed, and
inserting, retrieving or deleting one of the records from the system following the step of removing.

Bedrock also added new Claims 9-12, as follows:

Claim 9: (New) The method of claim 3, further comprising:
deallocating memory of the at least some of the automatically expired records.

Claim 10: (New) The method of claim 9, further comprising:
inserting the target record into the linked list if the target record was not found during the searching.

Claim 11: (New) The method of claim 7, further comprising:
deallocating memory of the at least some of the automatically expired records.

Claim 12: (New) The method of claim 11, wherein the inserting, retrieving or deleting includes inserting the target record into the linked list if the target record was not found during the searching.

Id.

The Court's Provisional Claim Construction Order. On October 7, 2010, the Court held a claim construction hearing on the '120 patent. On October 29, the Court issued its Provisional Claim Construction Order. Dkt. No. 326, Briggs Decl. ¶ 8, Ex. 6. The Court stated that it would "issue a Memorandum Opinion and Order, including a full analysis of the disputed claim terms, at a later date." *Id.* at 1.

The Court's Provisional Claim Construction Order set forth its preliminary constructions for each of the claim terms at issue. During the claim construction proceedings, Bedrock attempted to add limitations to certain terms in the '120 patent. Notably, for the term "removing . . . from the linked list," which the Court construed for claims 1, 3, 5 and 7, Bedrock proposed that the Court should construe this term for Claims 3 and 7 as "removing at least some of the automatically expiring records from the linked list *when the linked list is accessed for a purpose*

other than garbage collection, using the same linked list traversal performed for the purpose other than garbage collection.” Briggs Decl. ¶ 9, Ex. 7, p. 7 (emphasis added). The Court did not accept Bedrock’s proposed construction and instead ruled that the proper construction of the term is “adjusting the pointer in the linked list to bypass the previously identified expired records.” *Id.* at ¶ 8, Ex. 6, p. 3.

Bedrock’s Final Infringement Contentions. On November 29, 2010, just six days after amending two of its claims and adding new claims in the reexamination, Bedrock served its amended infringement contentions pursuant to Patent Local Rule 3-6(a). Briggs Decl. ¶ 10, Ex. 8.² In its final infringement contentions, Bedrock continued to assert all eight claims of the ‘120 patent against the defendants, including claims 3 and 7 in their original, unamended form.

Case Schedule. The discovery deadline is January 10, 2011. The expert disclosure deadline for opening reports is January 18, 2011. The expert disclosure deadline for rebuttal reports is January 25, 2011, and the expert discovery deadline is February 4, 2011. Further, summary judgment motions are due on either February 7, 2011 or seven days after the Court grants permission to file such motions. *Daubert* motions are due February 28, 2011 or seven days after the Court grants permission to file such motions. Trial is set for April 11, 2011. Dkt. No. 341.

ARGUMENT

“The district court has the inherent power to control its own docket, including the power to stay proceedings.” *EchoStar*, 2006 U.S. Dist. LEXIS 48431, at *3 (internal quotation omitted). This power to stay allows courts to “control the disposition of the causes on its docket

² This exhibit contains Bedrock’s Final Infringement Contentions for Google. Bedrock served similar infringement contentions against the other defendants asserting original claims 3, 4, 7 and 8.

with economy of time and effort for itself, for counsel, and for litigants.” *Id.* at *4 (internal quotation omitted). In this regard, Congress intended the reexamination process to permit “efficient resolution of questions about the validity of issued patents without recourse to expensive and lengthy infringement litigation.” H. Rep. 1307(I), 96th Cong., 2d Sess. 4, *reprinted in* 1980 U.S. Code Cong. & Admin. News 6460, 6463.

There are numerous advantages to granting a stay pending reexamination, including that (1) prior art presented to the Court will have first been considered by the PTO with its particular expertise; (2) in cases where the PTO finds the patent invalid, the suit will likely be dismissed; (3) the reexamination outcome may encourage a resolution without further involvement of the Court; and (4) issues, defenses and evidence will be more easily limited. *See, e.g., Premier Int’l Assocs. LLC v. Hewlett-Packard Co.*, 554 F. Supp. 2d 717, 720 (E.D. Tex. 2008). Here, staying the case pending the final reexamination decision is likely to lead to dismissal due to cancellation of the ‘120 patent or to result in significant limitations and clarifications as to the scope of the claims and the prior art. In addition, the defendants would avoid the severe prejudice of defending against changing claims of the same patent in multiple litigations.

Courts typically consider three factors in determining whether to stay litigation pending reexamination, and each of those factors favors a stay in this case: “(1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.” *EchoStar*, 2006 U.S. Dist. LEXIS 48431, at *3 (internal quotation omitted).

Here, the Court should not only stay the proceedings, but also dismiss the now abandoned claims that Bedrock has forever altered by amending them in the reexamination proceedings. No

authority supports trial over claims that have been effectively eliminated by the Plaintiff. The case should be stayed until it is determined if the purported amended claims can survive reexamination and the PTO's reexamination decision on all the purported claims is final.

I. A STAY WILL SIMPLIFY THE ISSUES IN QUESTION FOR TRIAL, WILL PREVENT THE INEFFICIENCY OF TWO TRIALS, AND MAY WELL MOOT ANY TRIAL.

Bedrock's recent filing in the PTO has significantly complicated the issues in this case. In its response to the rejection of all eight claims of the '120 patent, Bedrock has amended claims 3 and 7 in an attempt to avoid the prior art and circumvent this Court's Provisional Claim Construction Order. In both claims, Bedrock has added a limitation that requires removal of expired records while performing another task, that is, "searching for the target record." This limitation significantly narrows the scope of independent claims 3 and 7 (and dependent claims 4 and 8) because those claims now require that the removal of expired records occur while "searching for the target record" and not during the course of any other type of access.

Bedrock attempted to import this same concept into the same patent claims during the claim construction proceedings. During claim construction, Bedrock argued that the term "removing . . . from the linked list," for claims 3 and 7, be construed to mean "removing at least some of the automatically expiring records from the linked list when the linked list is accessed for a purpose other than garbage collection, using the same linked list traversal performed for the purpose other than garbage collection." Briggs Decl. ¶ 9, Ex. 7. The Court did not accept Bedrock's proposed construction. Instead, the Court found that the proper construction of the term is "adjusting the pointer in the linked list to bypass the previously identified expired records." Briggs Decl. ¶ 8, Ex. 6. Thus, the Court rejected Bedrock's attempt to limit the claims to being practiced only when records are accessed "for a purpose other than garbage collection."

Bedrock has now, just weeks after the Court's Provisional Claim Construction Order, amended these same claims to include the recently rejected concept of "for a purpose other than garbage collection" by requiring that the removal of the expired records occur while "searching for a target record." Bedrock should not be permitted to do an end-run around the Court's Provisional Claim Construction Order by amending its claims in this contrary manner less than one month afterwards.

Even more importantly, Bedrock should not be allowed to pursue its infringement claims on original independent claims 3 and 7 (and dependent claims 4 and 8) in this action when Bedrock has essentially conceded in the reexamination proceeding that original independent claims 3 and 7 are invalid. The scope of claims 3, 4, 7 and 8 has now been forever changed, and it would be fundamentally unfair to allow Bedrock to seek a finding of infringement of claims it has conceded are invalid and consequently has abandoned in the reexamination. Yet, Bedrock has clearly indicated its intention to move forward with original claims 3, 4, 7 and 8 by serving its final infringement contentions under Patent Rule 3-6(a) on November 29, six days after its submission to the PTO amending claims 3 and 7. If Bedrock is allowed to proceed on claims 3, 4, 7, and 8, the defendants will have to spend significant resources in preparing expert reports on the non-infringement and invalidity of claims that, at Bedrock's election, no longer exist. The Court and the parties should not be burdened with litigation over patent claims that no longer exist.

Further, if the PTO accepts Bedrock's amended claims and the four new claims, then Bedrock may attempt to assert those claims in this litigation. This would require a new round of claim construction briefs and proceedings. It would also require the parties to amend their infringement contentions, invalidity contentions, expert reports and any summary judgment

motions as well as require new discovery on the new and amended claims. Alternatively, Bedrock may attempt to assert the amended claims and the four new claims in a new lawsuit. This would force the Court and *the same parties* to conduct two separate lawsuits and two separate trials on *the same patent*. This would result in a colossal duplication of expense and effort by the Court and the parties. A stay would ensure that such an inefficient and unjust result will not occur.

In several cases, this Court has ruled that the amendment of claims during reexamination warrants a stay. For example, in *Southwire Co. v. Cerro Wire, Inc.*, No. 6:09-CV-289, 2010 U.S. Dist. LEXIS 120951, *6 (E.D. Tex. Nov. 10, 2010), the PTO issued an initial office action rejecting all claims of the patent-in-suit. In response, the plaintiff amended all of its independent claims and added three new claims. *Id.* Several of the proposed amendments were intertwined with terms the parties had asked the Court to construe. *Id.* at *8. The plaintiff was also making inconsistent statements, telling the Court that all of the original claims were valid, but telling the PTO that the claims were valid as amended. *Id.* at **8-9. The Court found that the plaintiff's claim amendments strongly favored staying the litigation. *Id.* “[I]t will waste the Court’s time and resources to construe the original [] patent’s claims. A stay would simplify and resolve any inconsistencies between [Plaintiff’s] representations to the Court and the PTO regarding the scope and validity of the [] patent.” *Id.* at *9.

Similarly, in *EchoStar*, the Court granted a motion to stay pending the *ex parte* reexamination of two patents and the *inter partes* reexamination of a third patent. 2006 U.S. Dist. LEXIS 48431, at *3. As in this case, discovery was not yet completed, summary judgment motions were not yet filed, and the Court had not completed its claim construction. *Id.* at *10. The Court found that the reexamination would likely simplify the case and prevent a waste of

resources. If “the PTO subsequently finds that some or all of the claims in issue here are invalid, the Court will have wasted time and the parties will have spent additional funds addressing an invalid claim or claims.” *Id.* at **9-10. “It would be an egregious waste of both the parties’ and the Court’s resources” to proceed with the case “if the claims were subsequently declared invalid or amended.” *Id.* at *10. *See also Microlinc, LLC v. Intel Corp.*, No. 2:07-CV-488 (TJW), 2010 U.S. Dist. LEXIS 99255, at *12 (E.D. Tex. Sept. 20, 2010) (granting stay pending reexamination because if any new or amended claims survived reexamination, “then the Court’s effort in construing the old claims may be futile”).

Here, as in *Southwire*, *EchoStar* and *Microlinc*, a stay would save the Court and the parties from expending time and resources on issues that are likely to either change or become moot due to the reexamination proceedings. Just like the plaintiffs in those cases, Bedrock is amending its old claims and adding new claims, all of which will greatly affect the current proceedings. Bedrock is also making inconsistent statements to the Court and the PTO. For example, Bedrock insists to this Court that original claims 3 and 7 are valid, but has effectively conceded that those claims are invalid in light of the prior art cited in the reexamination proceeding and has amended those claims in an attempt to avoid losing its patent entirely. As this Court found in *Southwire*, *EchoStar* and *Microlinc*, there is a high risk in this situation that the claims either will be found invalid or will be amended, either of which weighs in favor of a stay until the outcome is determined.

Not only would it be a waste of the parties’ resources to conduct a trial on a patent whose claims are in such a state of flux, but it would also be a waste of the Court’s time and resources to finally construe the current claims of the ‘120 patent, since Bedrock has already sought to

amend some of those claims and to add new ones. A stay would allow for the resolution of these currently unresolved issues and simplify the case for a single trial.

Finally, the prospect of a trial in this action may soon be moot. The PTO has so far rejected all eight claims of the '120 patent. If the PTO issues a final rejection of all eight claims, this case will be moot. *See, e.g., Dow Jones & Co. v. Abblaise Ltd.*, 606 F.3d 1338, 1349 n.3 (Fed. Cir. 2010) (Michel, C.J., joined by Rader, J., Folsom, D.J.) (“An ultimately final rejection of the claims by the PTO [in reexamination] would fatally undermine the legal presumption of the validity of the [] patent and would be sufficient by itself to moot this entire portion of the appeal”). Staying this action now will enable the Court and the parties to avoid expending substantial resources litigating an action that may soon become moot.

II. A STAY WOULD NOT UNDULY PREJUDICE BEDROCK AND WOULD PREVENT THE DEFENDANTS FROM BEING DISADVANTAGED.

Staying this case pending the completion of the '120 patent reexamination proceeding presents no risk of undue prejudice or tactical disadvantage to Bedrock. Instead, a stay would prevent the defendants from being prejudiced as a result of Bedrock's attempt to position itself to take a second bite at the apple.

First, Bedrock's business is patent litigation, and nothing more. Bedrock does not manufacture or sell any products, or otherwise practice the patent-in-suit. Accordingly, there is no risk whatsoever of a loss of customers or market share during the pendency of a stay—since Bedrock has no customers or market share to lose. *See, e.g., Microlinc*, 2010 U.S. Dist. LEXIS 99255, at *10 (finding no prejudice in staying litigation pending final resolution of reexamination proceeding where patent owner was not manufacturing or selling any products or practicing the patent). If the case is stayed and the PTO reverses its initial rejection of all claims of the '120 patent, Bedrock will not be in a worse position than it is now. Rather, Bedrock,

which has not sought preliminary injunctive relief in this case, can be fully compensated by a damages award. *See, e.g., eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 396-97 (Kennedy, Stevens, Souter, Breyer, JJ., concurring) (“When the patented invention is but a small component of the product the companies seek to produce . . . legal damages may well be sufficient to compensate for the infringement.”). That is the case here, where the patent-in-suit implicates only a small portion of code in an open-source operating system.

Further, the fact that Bedrock has amended claims 3 and 7 and added four new claims to the ‘120 patent weighs heavily in favor of a stay. Bedrock cannot be prejudiced by a stay of litigation as to patent claims that it has changed in the PTO. *See Southwire*, 2010 U.S. Dist. LEXIS 120951 at *11. Surely there is no tactical disadvantage to Bedrock in discontinuing the litigation of claims that no longer exist.

Defendants, however, will be prejudiced absent a stay of this litigation. All seven defendants will be required to spend extensive resources to defend against patent claims *all of which* the PTO has already preliminarily rejected. They will also be required to litigate against claims that Bedrock has effectively admitted are invalid by amending them and that consequently no longer exist. In addition, defendants may be subjected to a second lawsuit on the ‘120 patent, if Bedrock sues them again on its new and/or amended claims. Allowing Bedrock to pursue one set of claims at trial while simultaneously pursuing another set of six different claims in the same patent during the reexamination (its two amended claims and its four new claims) so as to be able later to assert those other claims against the defendants would be plainly unfair and prejudicial.

Finally, “[r]eexamination does not threaten protracted or indefinite delay.” *Alza Corp. v. Wyeth*, No. 9:06-CV-156, 2006 WL 3500015, at *1 (E.D. Tex. 2006). Indeed, Bedrock itself has

prolonged the reexamination process by requesting a two-month extension for its response and then modifying the patent-in-suit by amending two of the claims and adding four new ones. *See, e.g., Microlinc*, 2006 U.S. Dist. LEXIS 48431 at *11. And there is no indication that once the litigation resumes (if it ever does), Bedrock’s litigation costs would be any higher than if a stay were not granted. *Id.* at *7. Under these circumstances, the only prejudice and disadvantage relevant here are what the defendants would suffer were a stay not granted.

III. DISMISSAL OF THE AMENDED CLAIMS IS APPROPRIATE.

There is no purpose in having a trial on claims 3 and 7, or their dependent claims 4 and 8. These claims as they exist in the patent, as alleged in the Complaint, as construed in the provisional claim construction order and as framed in Bedrock’s invalidity contentions, no longer exist. Bedrock has abandoned them by introducing alternate amended language in an attempt to avoid the PTO’s conclusion that the claims as originally stated are invalid. Defendants are aware of no authority that permits trial over abandoned claim terms. This action should not only be stayed, but the claims based on claim terms that have now been abandoned should be dismissed.

IV. DISCOVERY IS NOT COMPLETE AND NO FINAL CLAIM CONSTRUCTION ORDER HAS BEEN ISSUED.

A stay is favored where, as in this case, a substantial amount of work remains before trial. In *EchoStar*, for example, the Court held that this factor weighed in favor of a stay because “although there has been a great deal of activity in this litigation to date, much remains to be done before the case is ready for trial. Discovery is not yet completed, summary judgment motions have not been filed, and the Court has not completed its claim construction.” 2006 U.S. Dist. LEXIS 48431 at *4.

Here, as in *EchoStar*, a substantial amount of work must be completed before this case is ready for trial. Although the discovery deadline is January 10, 2011, the majority of depositions have not yet taken place. Further, although the parties have already submitted their claim construction briefing and this Court has issued a Provisional Claim Construction Order (Dkt. 326), this Court has not yet issued a Final Claim Construction Order that will provide the details of the Court's reasoning for its claim constructions. In addition, the opening expert disclosure deadline is January 18, 2011, the deadline for expert rebuttal reports is January 25, and the expert discovery deadline is February 4. Summary judgment motions are due on either February 7 or seven days after the Court grants permission to file such motions. *Daubert* motions are due February 28 or seven days after the Court grants permission to file such motions. There plainly remains much to be done before trial, which is set for April 11, 2011. In *Microline*, the Court granted a stay with just over six months remaining before trial. Here, four months remain, with the majority of the substantive work yet to be completed.

Because discovery has not yet closed, a final claim construction order has not yet been issued, expert reports have not been exchanged, and summary judgment and *Daubert* motions have not been filed, the current procedural status of the case weighs in favor of a stay. The Court and the parties have not yet expended significant resources on very important parts of the case; accordingly, this is a convenient time to stay the case. Once the reexamination is complete, the parties can resume the litigation (if it has not been rendered moot) and the remaining tasks can be completed efficiently in light of what, if anything, remains of the patent-in-suit.³

³ On November 29, 2010, the U.S. Supreme Court granted *certiorari* to hear *Microsoft Corp. v. i4i Limited Partnership*. The issue to be decided in that case is the correct standard to be used when determining invalidity of a patent. This is, of course, a central issue in this case, and it would be instructive to receive the Supreme Court's opinion prior to trial. The Supreme Court is expected to hear argument in *i4i* in March 2011, and is expected to issue a decision in

V. CONCLUSION

For the foregoing reasons, the defendants respectfully request that the Court grant their motion to stay until the resolution of the pending reexamination on the '120 patent.

Dated: December 21, 2010

Respectfully submitted,

By: /s/ Todd Briggs

Claude M. Stern
Todd M. Briggs
Evette D. Pennypacker
QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 Twin Dolphin Dr., 5th Floor
Redwood Shores, CA 94065
Telephone: 650-801-5000
Facsimile: 650-801-5100
Email: claudestern@quinnemanuel.com
Email: toddbriggs@quinnemanuel.com
Email: evettepennypacker@quinnemanuel.com

June. A stay, then, would likely be beneficial not only for the reasons described above, but for the additional reason that the parties and the Court would have the guidance of the *i4i* decision and thus the jury would receive proper instructions on the burden of proof relating to prior art invalidity.

Michael E. Jones
State Bar No. 10929400
POTTER MINTON
A PROFESSIONAL CORPORATION
110 N. College
Tyler, Texas 75702
Telephone: (903) 597-8311
Facsimile: (903) 593-0846
Email: mikejones@potterminton.com

*Attorneys for Defendant Match.com LLC and
Google, Inc.*

/s/ Yar Chaikovsky (by permission)

Yar R. Chaikovsky
ychaikovsky@mwe.com
McDERMOTT WILL & EMERY
275 Middlefield Road, Suite 100
Menlo Park, CA 94025
Telephone: (650) 815-7400
Facsimile: (650) 815-7401

Attorneys for Defendant Yahoo! Inc.

/s/ Alan Whitehurst (by permission)

Alan L. Whitehurst
alan.whitehurst@alston.com
ALSTON & BIRD LLP
The Atlantic Building
950 F Street, N.W.
Washington, DC 20004
Telephone: (202) 756-3300
Facsimile: (202) 756-3333

*Attorneys for Defendants MySpace Inc. and AOL
Inc.*

/s/ E. Danielle T. Williams (with permission)

Steven Gardner
E. Danielle T. Williams
John C. Alemanni
Alton Absher III
KILPATRICK STOCKTON LLP
1001 West 4th Street
Winston-Salem, NC 27101
Telephone: 336-607-7300
Fax: 336-607-7500

William H. Boice
Russell A. Korn
KILPATRICK STOCKTON LLP
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309-4530
Telephone: 404-815-6500
Fax: 404-815-6555

J. Thad Heartfield
Texas Bar No. 09346800
thad@jth-law.com
M. Dru Montgomery
Texas Bar No. 24010800
dru@jth-law.com
THE HEARTFIELD LAW FIRM
2195 Dowlen Road
Beaumont, TX 77706
Telephone: 409-866-2800
Fax: 409-866-5789

*Attorneys for Defendants Amazon.com Inc.
and SoftLayer Technologies, Inc.*

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for defendants and plaintiff have satisfied the meet and confer requirements of Local Rule CV-7(h). On December 15 and 20, 2010, counsel for defendants, met and conferred with counsel for plaintiff regarding the relief requested in the foregoing motion. In that conference, we discussed our clients' positions. These discussions conclusively ended in an impasse regarding the issues in the motion.

/s/ Todd Briggs _____
Todd Briggs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who have consented to electronic service are being served with a notice of filing of this document pursuant to L.R. CV-5(a)(7).

Date: December 21, 2010

/s/ Todd Briggs _____
Todd Briggs