

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BEDROCK COMPUTER) DOCKET NO. 6:09-cv-269
TECHNOLOGIES, LLC)
)
VS.) TYLER, TEXAS
) FEBRUARY 16, 2011
SOFTLAYER TECHNOLOGIES,)
INC., ET AL) 9:30 A.M.

MOTION HEARING
BEFORE THE HONORABLE JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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(PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
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P R O C E E D I N G S

THE COURT: All right. Ms. Morris, you may call the case.

COURTROOM DEPUTY: The Court calls Case Number 6:09-cv-269, Bedrock Computer Technologies versus Softlayer Technologies, et al.

THE COURT: Announcements?

MR. CAWLEY: Good morning, Your Honor. Douglas Cawley for the Plaintiff Bedrock Technologies. We're ready to proceed.

THE COURT: Thank you.

For the Defendants?

MR. HEARTFIELD: Good morning, Your Honor. Thad Heartfield with Bill Boice and Danielle Williams. We're here for Softlayer and Amazon. We're ready.

MR. DACUS: Morning, Judge. Deron Dacus here with Frank Smith, Alan Whitehurst, Lou Karasik on behalf of AOL and MySpace, and also Chris Day here with AOL, Your Honor. We're ready to proceed.

MS. DOAN: Morning, Your Honor. Jennifer Doan, and I'm here with Fay Morriseau, Yar Chaikovsky, and David Brightman from Yahoo.

MR. JONES: Your Honor, Mike Jones for Google and Match.com with Claude Stern and Evette

1 Pennypacker, if you can see her behind the post.

2 THE COURT: All right. Anyone else?

3 All right. Well, thank you.

4 We're here for a motion hearing on the
5 Defendants' Motion to Stay, 347. I appreciate the fact
6 that a couple of the motions that we had set today have
7 been resolved or gone away. So we're down to that
8 motion. I wanted to discuss the willfulness issue, and
9 then I wanted to also just follow up by discussing how
10 ultimately, if this case goes to trial, how it is going
11 to be tried.

12 So, let's start first -- I want to
13 address the reexam issue that has been brought to the
14 Court's attention to the motion to stay.

15 MR. CAWLEY: I think that's moot, Your
16 Honor.

17 Am I mistaken?

18 MR. STERN: I don't know. Why would --
19 if it's moot, I'm not sure why.

20 THE COURT: Well, what I want -- I'm not
21 necessarily, I guess, talking about stay as much as I
22 am what claims are going to go to trial. As I stated
23 in my order, and y'all will have to update me on what
24 the discussions have been post the order that I issued
25 leading up to this hearing. But, as I stated, I -- my

1 court, I think that's a reasonable request. But I
2 think that y'all can just sign something and avoid all
3 that, you know.

4 MR. CASSADY: Your Honor, that's what's
5 going to happen. You're not going to hear about this
6 again unless there's some ridiculous malfunction.

7 THE COURT: Okay. All right. Well,
8 we'll move on then from that.

9 All right. Well, let me just mention --
10 and I don't want -- I think this is a good resolution
11 here. I think we can go forward on this.

12 I do just want to mention, and I don't
13 want to get into it, I don't think today, because we'll
14 just have to see how this develops. But as this --
15 well, let me -- update me on is the -- is basically
16 what's going on here now in the reexam is that there's
17 an -- just a waiting of the final reissued certificate?

18 MR. CASSADY: Your Honor, there's a
19 notice of allowance on various claims, and we're just
20 waiting for a final certificate.

21 I'll note for the Court that another
22 reexam has been filed on, I think, basically the same
23 art that was before the reexam before. We just don't
24 know what's going to happen with that reexam. But the
25 point is there's notice of allowance, which usually

1 just has a -- just is an accounting issue, it's waiting
2 to go through the process of actually being a final
3 allowance.

4 THE COURT: Okay. Well, we're going to
5 go forward in the way we've discussed today. If issues
6 turn up, you can draw them to the Court's attention as
7 far as what effect the ultimate reissuance of the
8 certificate has on this litigation. But at this point,
9 we're going to move forward and we'll just see what
10 further developments occur related to the reexam.

11 All right. Well, I guess then what I
12 want to move on to is -- well, let me first address the
13 willfulness issue. I wanted to address that with the
14 parties, because I want to be clear on -- I received
15 your letter briefs and reviewed them.

16 What I want to be clear on from Bedrock's
17 perspective is two things, I guess; one being, as I
18 understand your letter brief, your basis for asserting
19 willfulness in this case has to do with the fact
20 that -- I'm trying to find the date here -- well,
21 essentially the reemerge -- the emergence from
22 reexamination created a situation where there was an
23 objectively high likelihood the Defendants are
24 infringing a valid patent.

25 So I guess I first want to be clear on is

1 that the basis, either solely or I guess primarily, for
2 a willfulness allegation here?

3 MR. HEJNY: That's correct, Your Honor.
4 That's one of the bases for our willfulness
5 allegations.

6 The first objective basis would be the
7 fact that Bedrock prevailed on almost every claim
8 construction position in the provisional order that you
9 issued on October 29th, and in the final memorandum and
10 opinion that came out on January 11th. As has been
11 discussed before, on January 14th Bedrock received a
12 notice of intent to issue the reexamination certificate
13 in the case, and those two factors, Your Honor, Bedrock
14 believes establish a likelihood that there is no reason
15 why Defendants are acting without objective
16 recklessness.

17 THE COURT: So your willfulness case runs
18 from -- whatever it is -- November of 2010 to January
19 2011. So you've got about a four-, five-month window
20 here of willful infringement? Is that what's going on
21 here?

22 MR. HEJNY: That's correct Your Honor.

23 THE COURT: Well, I guess; one, I wonder
24 in such a situation as you've presented, what issue is
25 there for the jury to decide? It's almost as if there

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christy Humphries, CSR, RPR

Date: February 28, 2011