

Plaintiff Bedrock Computer Technologies LLC (“Bedrock”) hereby submits its response in opposition to Defendants’ Motion for Reconsideration and Objections to Report and Recommendation Denying Motion for Summary Judgment of Non-Infringement (Dkt. No. 722). Bedrock respectfully requests that the Court adopt Magistrate Judge Love’s Report and Recommendation (“Recommendation”) denying summary judgment of non-infringement, overrule Defendants’ objections, and deny Defendants’ motion for reconsideration.

I. INTRODUCTION

After considering the parties’ briefings, conducting a hearing, and listening to the parties’ arguments regarding non-infringement, Magistrate Judge Love correctly concluded that Defendants’ motion for summary judgment of non-infringement should be denied. (*See* Dkt. No. 659.) Defendants’ instant motion, which seeks to overturn Judge Love’s Recommendation, raises arguments which were previously carefully considered and then rejected by Judge Love. For these reasons, the Court should deny Defendants’ motion and adopt Judge Love’s Recommendation.

II. ARGUMENT

A. Judge Love Was Not Required to Submit Findings of Fact or Conclusions of Law.

Defendants first assert that, because Judge Love did not provide findings of fact or conclusions of law to support his Recommendation that summary judgment of non-infringement of U.S. Patent No. 5,893,120 (“120 patent”) be denied, the Court should reject the Recommendation. (Dkt. No. 422 at 1.) However, Defendants cite no case law for this proposition, and Defendants’ strained reading of 28 U.S.C. § 636(b)(1) is at odds with the express language of Federal Rule of Civil Procedure 72(b)(1), which states that for dispositive motions, a magistrate “must enter a recommended disposition, including, *if appropriate*,

proposed findings of fact.” FED. R. CIV. P. 72(b)(1) (emphasis added); *see also Habets v. Waste Mgmt.*, 363 F.3d 378, 382 (5th Cir. 2004) (“[T]he magistrate here made no involved findings of fact because this was a recommendation on a motion for summary judgment.”).

Further, the district court judge—not the magistrate—is vested with ultimate decision-making authority as to whether the evidence of record supports a magistrate’s recommendation on a dispositive matter. *See* 28 U.S.C. § 686; *see also Mass. Institute of Tech. v. Abacus Software, Inc., et al.*, Case No. 5:01-CV-344, 2004 U.S. Dist. LEXIS 30050, *16 (E.D. Tex. Sept. 29, 2004) (citing *Freeman v. County of Bexar*, 142 F.3d 848, 852 (5th Cir. 1998)). Because the district court judge always retains authority to review, alter, adopt, or reject a magistrate’s recommendation, a recommendation’s omission of specific findings of fact and conclusions of law cannot, alone, render the recommendation improper. *See id.*; *see also ColorQuick, LLC v. VistaPrint Ltd., et al.*, Case No. 6:09-CV-323, 2010 U.S. Dist. LEXIS 136226, *14 (E.D. Tex. July 22, 2010) (Davis, J.) (denying objections to the magistrate’s determination and stating that, “although the factors were acknowledged in broad terms, there is nothing to support Defendants’ conclusion that the Magistrate Judge did not carefully consider and weigh each factor. Moreover, the [district] Court’s more detailed discussion of the relevant factors confirms the Magistrate Judge’s conclusion”).

Accordingly, Magistrate Judge Love simply was not required to set forth findings of fact and conclusions of law in his recommendation, and there is, thus, no basis for Defendants’ contention that the Recommendation is improper.

B. Defendants’ Substantive Arguments Have Already Been Addressed.

With respect to Defendants’ substantive objections to Judge Love’s Report and Recommendation, Defendants rely only upon arguments which were already detailed in the summary judgment briefing, addressed in argument at the March 17, 2011 hearing, and fully

responded to by Bedrock. (See Dkt. Nos. 463 [Defendants' Motion for Summary Judgment of Non-Infringement], 533 [Bedrock's Response in Opposition], 574 [Defendants' Reply], and 601 [Bedrock's Sur-Reply]; see also Dkt. Nos. 669 [Yahoo!'s Motion to Strike Bedrock's Spinlock Theory] and 687 [Bedrock's Response].)

As such, Bedrock will not duplicate that discussion here.¹ Rather, Bedrock adopts by reference its arguments in Docket Numbers 533, 601, and 687 and requests that the Court adopt the Report and Recommendation of Judge Love and deny Defendants' Motion for Summary Judgment of Non-Infringement, (Dkt. No. 659), and Defendants' motion for reconsideration.

III. CONCLUSION.

For the aforementioned reasons, Bedrock respectfully requests that the Court deny Defendants' Motion for Reconsideration.

¹ Bedrock further notes that jury's verdict in the first trial against Google, which found that the '120 patent was infringed, and this Court's denial of Defendants' Motion for Judgment as a Matter of Law of Non-Infringement. (See Trial Tr. (April 14, 2011, afternoon), attached hereto as Exhibit 1, at 110:1-14; Dkt. No. 746.)

DATED: April 21, 2011

Respectfully submitted,
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/s/ Douglas A. Cawley

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CERTIFICATE OF SERVICE

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 21st day of April, 2011.

/s/ Ryan A. Hargrave
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