

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

ALOFT MEDIA, LLC

§

vs.

§

Case No. 6:09-CV-304

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ORACLE CORP., ET AL.

§

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JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Plaintiff Aloft Media, LLC (“Aloft”) and Defendants Halliburton Company, Halliburton Energy Services, Inc. (collectively “Halliburton”) and Fair Isaac Corporation (“FICO”) hereby submit the parties’ Joint Claim Construction and Prehearing Statement pursuant to Local Patent Rule 4-3 and the amended docket control order entered by the Court on September 21, 2010 (Dkt. No. 134). There are two patents at issue in this lawsuit: U.S. Patent Nos. 7,499,898 (“the ‘898 Patent”) and 7,593,910 (“the ‘910 Patent”).

Section I identifies the claim terms/phrases of the patents-in-suit for which the parties have agreed on a joint construction. Section II and Exhibit A contains Aloft’s proposed constructions for the disputed terms of the patents-in-suit, along with supporting intrinsic evidence. Section III and Exhibit B contains the defendants’ claim construction position for the disputed terms of the patents-in-suit. Section IV contains the parties’ positions regarding the length of the claim construction hearing. None of the parties anticipate calling any witnesses, including experts, at the claim construction hearing.

I. Construction of Claim Terms on which the Parties Agree

The parties have been unable to reach agreement on the construction of the terms currently at issue in this case.

II. Aloft's Construction of Disputed Claim Terms and Identification of Evidence

In the claim chart attached hereto as Exhibit A, Aloft proposes claim constructions for the disputed claim terms of the patents-in-suit, and identifies intrinsic evidence upon which it may rely to support its proposed constructions.

III. Defendants' Construction of Disputed Claim Terms and Identification of Evidence

In the claim chart attached hereto as Exhibit B, the defendants propose their claim construction position for the disputed claim terms of the patents-in-suit.

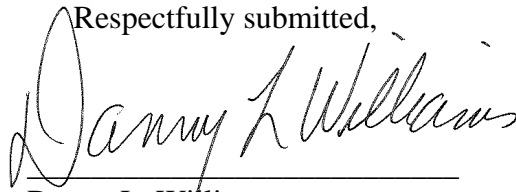
IV. Length of Claim Construction Hearing

By its docket control order, the Court set the claim construction hearing to begin at 9:30 a.m. on January 13, 2011. The parties jointly propose that the Court allow a total of 3 hours (1.5 hours per side) for the *Markman* hearing and hearing on any Motion for Summary Judgment of Indefiniteness. Defendants additionally propose that the Court entertain argument on their motion for summary judgment of invalidity of the patents-in-suit (#149) ("*Bilski* motion") within the time allotted for the *Markman* hearing. Aloft does not believe that oral argument is necessary on the defendants' *Bilski* motion, and therefore opposes the defendants' request.

At this time, the parties do not believe there are any issues that need to be addressed by the Court at a prehearing conference.

Dated: November 9, 2010

Respectfully submitted,



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| | |
|---|--|
| <p>Respectfully submitted,</p> <p>Fulbright & Jaworski L.L.P.</p> <p>By: <u>/s/ Eric B. Hall</u></p> <p>Brett C. Govett Texas Bar No. 08235900 Lead Attorney Email: bgovett@fulbright.com</p> <p>Miriam L. Quinn Texas Bar No. 24037313 Email: mquinn@fulbright.com</p> <p>Fulbright & Jaworski L.L.P. 2200 Ross Avenue, Suite 2800 Dallas, TX 75201-2784 Telephone: (214) 855-8000 Facsimile: (214) 855-8200</p> <p>Eric B. Hall Texas Bar No. 24012767 Email: ehall@fulbright.com</p> <p>Fulbright & Jaworski L.L.P. 1301 McKinney, Suite 5100 Houston, TX 77010-3095 Telephone: (713) 651-5627 Facsimile: (713) 651-5246</p> <p>Counsel for Defendant Fair Isaac Corporation</p> | <p>Respectfully submitted,</p> <p>McKOOOL SMITH, P.C.</p> <p>By: <u>/s/ Phillip Aurentz</u></p> <p>Theodore Stevenson III Texas State Bar No. 19196650 tstevenson@mckoolsmith.com</p> <p>Aimee Perilloux Fagan Texas State Bar No. 24010299 afagan@mckoolsmith.com</p> <p>Phillip Aurentz State Bar No. 24059404 paurentz@mckoolsmith.com</p> <p>McKool Smith, P.C. 300 Crescent Court, Suite 1500 Dallas, Texas 75201 Telephone: (214) 978-4000 Telecopier: (214) 978-4044</p> <p>Counsel for Defendants Halliburton Co., and Halliburton Energy Services, Inc.</p> |
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail on November 9, 2010.

/s/ Mark Dunlinson
Litigation Paralegal

EXHIBIT A

| U.S. PATENT NOS. 7,499,898; 7,593,910 | | | |
|--|--|---|--|
| Patent No(s):Claim(s) | Claim Term | Proposed Construction | Intrinsic Evidence¹ |
| ‘898:14 | decision logic | operations to execute a decision process | <u>‘898 Patent:</u> Figures 1, 1a, 9, 11-18; Abstract; 2:7-14; 3:16-4:3; 17:13-28, 37-54, 58-63; 18:1-16, 17-67; 19:14-15, 24-28, 57-59, 60-62; 22:14-16. |
| ‘898:14 | capable of performing decision logic | No construction necessary. | |
| ‘898: 46 ‘910:110 | decision making | evaluating alternatives in the course of a decision process | <u>‘898 Patent:</u> Figures 1-9, 11-18; 1:17-19, 23-67; 3:53-4:3; 20:42-44; 13:31-34; 14:14-15:58; 15:21- 40. <u>‘910 Patent:</u> 1:11-30; 19:51-53; 22:38-58; 25:7-9; 27:66-67; 28:1-18; 32:52-53; 34:42-44. |
| ‘910:110 | logic related to decision making | No construction necessary. | |
| ‘910:110 | capable of performing logic related to decision making | No construction necessary. | |

¹ Aloft’s constructions are based on the intrinsic record of the patents-in-suit, and extrinsic evidence is therefore not necessary to properly construe the terms at issue in this case.

| U.S. PATENT NOS. 7,499,898; 7,593,910 | | | |
|--|---------------------------------|---|---|
| Patent No(s):Claim(s) | Claim Term | Proposed Construction | Intrinsic Evidence¹ |
| '898:14, 63 '910:110, 209 | potential feasible hybrid theme | a strategy resulting from a combination of parameters from two or more alternative strategies | <u>'898 Patent:</u> Figures 6a, 7; 12:52-55; 12:66 – 13:15; 14:5-11; 18:1-16; 18:21-19:8; 20:4-21, 59-67; 22:8-12. <u>'910 Patent:</u> 17:11-30; 18:28-45; 20:47-49, 65-67; 21:1-10, 14-16; 22:7-11, 15-20, 40-58; 23:50-67; 26:6-8, 24-36, 27:35-39, 43-48; 28:1-18; 29:5-19; 31:14-15, 27-29, 30-36; 32:25-29, 32-36. |
| '898:14, 45, 63 '910:110, 157, 159, 209 | decision hierarchy display | a display that indicates the precedence of parameters in a decision process | <u>'898 Patent:</u> Figure 3, 3a, 4, 8a, 29, 30; 1:23-49; 10:42-51; 11:6-7; 11:48-51; 13:31-34, 46-48; 16:65 – 17:4; 17:55-63; 18:57-19:8; 20:4-21, 39-44; 22:8-12. <u>'910 Patent:</u> 17:11-30; 18:28-45; 19:48-56; 20:14-22; 21:51-55; 22:7-11, 15-20, 40-58; 23:50-67; 25:4-12, 39-47; 27:12-16, 35-39, 43-48; 28:1-18; 29:5-19; 30:17-25, 50-58; 32-8-11, 25-29, 32-36, 64-67; 33:1-6, 34-53; 34:34-37. |

| U.S. PATENT NOS. 7,499,898; 7,593,910 | | | |
|---------------------------------------|---------------------------------|--|--|
| Patent No(s):Claim(s) | Claim Term | Proposed Construction | Intrinsic Evidence ¹ |
| '898:14 | per the application | No construction necessary. | |
| '898:14 | computer code for processing | No construction necessary. | |
| '898:15 '910:111, 118-21 | universal modules | a reusable software component for carrying out certain functionality | <u>'898 Patent:</u> Figures 1, 1a, 2, 3-7, 9, 11-18; 4:52-59, 63-66; 6:12-16, 18-23; 17:29-33; 19:9-13, 29-33, 39-56. <u>'910 Patent:</u> 17:31-35, 52-56, 62-67; 18:1-12; 22:59-63; 23:11-34; 28:19-22, 37-40, 45-60. |
| '898:22 '910:117 | collaborative decision platform | computing environment that facilitates decision processes for different purposes by retrieving and receiving information from different sources and processing the information | <u>'898 Patent:</u> Figures 1-9, 11-18; Abstract; 1:17-19, 57-62; 3:26-33; 10:21-23, 32-25; 15:22-26; 19:26-28. <u>'910 Patent:</u> 17:49-51; 23:8-10; 28:35-36. |
| '898:35 '910:129 | assessing uncertainties | No construction necessary. | |
| '898:42-44 '910:139-41, 176-77 | value | No construction necessary. | |

| U.S. PATENT NOS. 7,499,898; 7,593,910 | | | |
|--|-------------------|------------------------------|---------------------------------------|
| Patent No(s):Claim(s) | Claim Term | Proposed Construction | Intrinsic Evidence¹ |
| '898:42-44 '910:140-41, 177 | sources of value | No construction necessary. | |

EXHIBIT B
TO
JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Defendants submit that the following claim terms are intractably ambiguous and not amenable to construction, and that, as a result, the claims indicated in the chart below are indefinite and invalid under 35 U.S.C. §112 ¶2.

| TERMS | LOCATION IN CLAIMS |
|--|---|
| decision logic | 898 - Cl. 14 |
| capable of performing decision logic | 898 - Cl. 14 |
| decision making | 898 - Cl. 46 910 - Cl. 110 |
| logic related to decision making | 910 - Cl. 110 |
| capable of performing logic related to decision making | 910 - Cl. 110 |
| potential feasible hybrid theme | 898 - Cl. 14, 63 910 - Cl. 110, 209 |
| decision hierarchy display | 898 - Cl. 14, 45, 63 910 - Cl. 110, 157, 159, 209 |
| per the application | 898 - Cl. 14 |
| computer code for processing | 898 - Cl. 14 |
| universal modules | 898 - Cl. 15 910 - Cl. 111, 118, 119, 120, 121 |
| collaborative decision platform | 898 - Cl. 22 910 - Cl. 117 |
| assessing uncertainties | 898 - Cl. 35 910 - Cl. 129 |
| value | 898 - Cl. 42, 43, 44 910 - Cl. 139, 140, 141, 176, 177 |
| sources of value | 898 - Cl. 42, 43, 44 910 - Cl. 140, 141, 177 |

Defendants believe that any term in the Asserted Claims that is amenable to construction has its plain and ordinary meaning and, to the extent there is no disagreement as to the plain and ordinary meaning, does not require construction by the Court.