UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

I/P ENGINE, INC. Plaintiff, v. AOL, INC., *et al.*, Defendants.	Civil Action No. 2:11-cv-512

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION IN PART OF CLAIM CONSTRUCTION ORDER

Defendants move the Court to reconsider its claim constructions for the terms "collaborative feedback data" (from '420 claims 10 and 25) and "[feedback system for] receiving information found to be relevant to the query by other users" (from '664 claims 1 and 26). Defendants respectfully submit that the Court's claim construction rulings as to these phrases were a result of a misunderstanding of the parties' actual dispute and also fail to take into account the parties' agreement that "collaborative feedback" necessarily requires feedback of users "with similar interests or needs."

Argument

I. THE COURT'S CONSTRUCTION OF "COLLABORATIVE FEEDBACK DATA" OMITS THE *AGREED UPON* REQUIREMENT THAT THIS DATA MUST CORRESPOND TO "USERS WITH SIMILAR INTERESTS OR NEEDS."

The parties agreed that the "collaborative feedback data" of claims 10 and 25 of the '420 patent must correspond to users "with similar interests or needs." In its briefing, Plaintiff acknowledged that "the system considers 'what informons other users with similar interests or needs found to be relevant.' The parties agree that *this* is the claimed 'collaborative feedback data.'" (Pl. Opening Br. (Dkt. 129) at 22 (emphasis added).) Plaintiff further explained

collaborative filtering "determines relevance based on feedback from other users – it looks to what items other users *with similar interests or needs found to be relevant*." (*Id.* at 3 (emphasis added).) Plaintiff similarly explained at the *Markman* Hearing that collaborative feedback data corresponds to which informons "other users with similar interests or needs have found to be relevant":

> So, your Honor, interestingly, both parties point to the same language in the specification to support their constructions, and what I would point out to the Court with respect to this specification language which appears here at the bottom of the slide is that it is referring to the same thing that I'm talking about here, which is the informons that the other users with similar interests or needs have found to be relevant.
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> * * *
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> The specification language both parties rely upon appears in the left under the blue heading, and the key part we have put in brackets at capital [A], the language, *that's really what's being construed. 'What informons other users with similar interests or needs found to be relevant*.' And you will see the plaintiff's proposal tracks that language very closely."[1]

(Tr. 34:18-25; 36:4-13) (emphases added).

Despite this agreement, the Court construed the term "collaborative feedback data" as "data from system users regarding what informons such users found to be relevant." (Order, 10.) In doing so, the Court omitted the parties' agreed upon requirement that the collaborative feedback data correspond to "users with similar interests or needs." Defendants respectfully submit the Court should exercise its discretion and reconsider this construction to correct this

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[1] As both parties acknowledged, "[c]ollaborative filtering [] is the process of filtering informons, *e.g.*, documents, by determining what informons *other users with similar interests or needs* found to be relevant." (4:26-29 (emphasis added).) The Court discounted this passage on the theory that the specification's definition of collaborative *filtering* should not be used to define collaborative *feedback data*. (*See* Order at 10.) Defendants respectfully submit that the Court's position was erroneous, because the specification's definition of collaborative filtering shows what the patents mean by the word "collaborative" itself, as both parties agreed.

error. *ActiveVideo Networks, Inc. v. Verizon Comm'ns, Inc.*, No. 2:10-cv-248-RAJ, at 3 (E.D. Va. June 30, 2011) (under Federal Rule of Civil Procedure 54(b), a court may revise an interlocutory order at any time before the entry of judgment, in the exercise of its discretion and "as justice requires"); *Boykin Anchor Co., Inc. v. Wong*, No. 5:10-cv-591, 2012 WL 937182, *1 (E.D.N.C. March 20, 2012): "No clear standard exists for the analysis of a motion for reconsideration under Fed. R.Civ. P. 54(b) other than its resolution [is] 'committed to the discretion of the court.'"[2]

It appears this error stems from a misunderstanding of the parties' actual dispute regarding this term. The Court stated "I/P Engine submits that Defendants attempt to read an additional source limitation into this claim by adding the requirement that the data must come from 'users with similar interests or needs' to the one limitation contained within the claim language that data must come from 'system users.'" (Order, 10.) Plaintiff, however, did not contend that Defendants improperly added that the data must correspond to "users with similar interests or needs." Again, to the contrary, Plaintiff agreed that the data must correspond to users with similar interests or needs.

Instead, the dispute concerning this term was whether this data regarding users, whom both parties agreed must have "similar interests or needs," comes *from* those users, as Defendants proposed in their construction ("data *from* users with similar interests or needs regarding what informons such users found to be relevant"), or merely *concerns* what informons those users found relevant, as Plaintiff proposed in its construction ("information *concerning*

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[2] "[T]he Federal Circuit has expressly noted the need for district courts to entertain motions to reconsider in the specific context of claim construction." *Lighting Ballast Control, LLC v. Philips Elecs. N. Am. Corp.*, No. 7:09-cv-29, 2010 WL 4946343, *10 (N.D. Tex. Dec. 2, 2010) (citing *Jack Guttman, Inc. v. Kopykake Enters., Inc.*, 302 F.3d 1352, 1361 (Fed. Cir. 2002)).

what informons other users with similar interests or needs found to be relevant.") (Joint CC & Pre-Hr'g Statement, Ex. A at 1 (emphasis added); Order, 8; Tr. 70:23 to 71:20.) Indeed, Plaintiff specifically objected that "Defendants' definition requires that the data be '*from* users with similar interests or needs.'" (Pl. Opening Br. at 22 (emphasis in original).) Plaintiff echoed this position at the hearing, observing its agreement that collaborative feedback is information corresponding to what "users with similar interests or needs found to be relevant," but distinguishing the parties' constructions based upon what it described as a "source limitation" of where this information comes *from*:

> IPE's construction, on the other hand, your Honor, does not propose a second source limitation. But instead, what it does is it proposes to explain collaborative feedback data is the information concerning what informons users with similar interests or needs found to be relevant. So the point here is we are still just talking about data or information. We are not talking about where it's coming *from*. This fits harmoniously and appropriately within the claim language itself, your Honor.

(Tr. 34:2-11.)

In its *Markman* ruling, the Court agreed with Defendants on the parties' actual dispute, concluding "it is clear to the Court that the collaborative feedback data comes from system users and pertains to informons considered by those users." (Order, 9.) Given the parties' agreement that collaborative feedback data involves users with similar interests or needs, and given the Court's finding that this data comes from users, the construction should have necessarily included the limitation that the data be "from users with similar interests or needs regarding what informons such users found to be relevant," as Defendants asserted.

Accordingly, Defendants respectfully request that the Court reconsider its Order and adopt Defendants' construction of "collaborative feedback data."

II. THE "OTHER USERS" IN "[FEEDBACK SYSTEM FOR] RECEIVING INFORMATION FOUND TO BE RELEVANT TO THE QUERY BY OTHER USERS" MUST BE OTHER USERS WITH SIMILAR INTERESTS OR NEEDS

The Court's decision not to construe the "[feedback system for] receiving information found to be relevant to the query by other users" phrases in the '664 patent appears to have stemmed from a similar error that affected its construction of "collaborative feedback data." (*See* Order at 11-12.) Only Defendants' proposed construction properly recognizes that the feedback system must incorporate the concept of collaborative feedback.

Notwithstanding the parties' divergent constructions, the parties agreed that all of the asserted claims of the '664 patent must include collaborative feedback. For example, Plaintiff stated: "[t]he Lang/Kosak patents teach innovative search engine techniques that provide high-quality search results by combining content-based data with collaborative feedback data from other users to optimally satisfy a user's need for information." (Pl. Opening Br. at 1 (emphasis added); *see also* Def. Response Br. (Dkt. 158) at 2-4; Defendants' *Markman* slides 21-24.) Plaintiff repeated this agreement at the hearing, stating that "Lang and Kosak through their invention came up with an improved way to filter search results combining the content analysis and collaborative feedback to provide superior results" (Tr. 27:20-23) and further that "[t]he claims in the '420 and the '664 patent relate to combining two specific measures in that methodology that happens in the search engine, two specific measures to improve search results. Those specific measures are content and collaborative data." (*Id*. at 16:13-17.) When discussing the particular phrases at issue, Plaintiff acknowledged that they referred to the same collaborative feedback data of the '420 patent. (*Id.* at 38-39.) In fact, Plaintiff acknowledged that "collaborative feedback data" in the '420 patent expressed the same concept as the phrases at issue in the '664 patent, just in a different way. (*Id*. at 37:21-25: "And we see a similar kind of issue here with respect to the '664 and the two claims that are at issue here. The language is

different because patent lawyers, I have learned over doing these cases, like to express the same concepts in different ways.")

Further, the parties agreed that collaborative feedback requires users with similar interests or needs. Thus, the "other users" in '664 claims 1 and 26 necessarily must be understood to mean other users "with similar interests or needs" in order to provide these claims with the collaborative feedback element that both parties agree is required by claims 1 and 26. Indeed, Plaintiff admitted this too, stating that "[c]ollaborative filtering, on the other hand, determines relevance based on feedback from other users – it looks to what items other users with similar interests or needs found to be relevant." (Pl. Opening Br. at 3 (emphasis added).) And as with "collaborative feedback data," Plaintiff took issue with Defendants' construction because it supposedly added a "separate source limitation." (Tr. 39.)

In refusing to construe these phrases, the Court failed to acknowledge both (1) the parties' agreement that the claims must include collaborative feedback, and (2) the parties' agreement that collaborative feedback requires users with similar interests or needs, and thereby overlooked that the "other users" in this phrase must be understood to mean other users *with similar interests or needs* to capture the "collaborative feedback" that all parties agree must be present in the claims.

Further, the Court reasoned that it need not construe the phrases because claim construction is not required for all terms, but only where there is a genuine dispute between the parties. (Order, 11.) The Court found that with these phrases construction was not required because the plain language itself was sufficient to resolve any dispute. (*Id.* at 12.) Defendants respectfully submit, however, that the language alone does not resolve the parties' dispute. Indeed, as explained above, Plaintiff and Defendants have asserted disparate interpretations of

this language, despite their agreement that the feedback data at issue must involve "users with similar interests or needs."

Accordingly, and to avoid further disputes as to these phrases later in the case, Defendants respectfully request that the Court reconsider its construction for "[feedback system for] receiving information found to be relevant to the query by other users" and adopt Defendants' construction that properly interprets these phrases to apply to information corresponding to users with similar interests or needs, as both parties agree is required by the '664 patent.

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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