UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

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

OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION IN PART OF CLAIM CONSTRUCTION ORDER

I. INTRODUCTION AND SUMMARY

Defendants' Motion for Reconsideration ("Motion") urging the reconsideration of certain claim construction terms is without merit. Defendants offer this Court no credible reason for such an extraordinary request; they point to no new facts, no changes in law, nor any errors of law that would compel another outcome. Instead, Defendants merely rehash positions already considered and rejected by this Court.

As stated by this Court, the purpose of a motion to reconsider is narrow and limited to bringing this Court's attention to manifest errors of law or newly discovered evidence. *ActiveVideo Networks, Inc. v. Verizon Comm'ns, Inc.*, No. 2:10-cv-248-RAJ, D.I. 757, at 3 (E.D. Va. June 30, 2011) (citing *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993) ("A district court may grant a motion for reconsideration under Rule 54(b): (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available earlier; or (3) to correct a clear error of law or prevent manifest injustice."). Such a motion is not intended

as an opportunity for parties – like Defendants – to reargue the merits of their previously submitted positions or to rehash old arguments. *Id*. ("It is axiomatic that a Motion for Reconsideration is not a tool with which an unsuccessful litigant may force this Court's attention to matters adequately and previously addressed."). If Defendants' sole purpose is to reargue claim construction, as is the case here, this is not grounds for a motion to reconsider. The claim terms "collaborative feedback data" and "[feedback system for] receiving information found to be relevant to the query by other users" were fully briefed by both sides during the claim construction process, and Defendants' arguments were expressly considered by this Court.

In this instance, Defendants' Motion simply boils down to Defendants' disagreement with this Court's constructions of the claim terms "collaborative feedback data" and "[feedback system for] receiving information found to be relevant to the query by other users." As explained below, that argument cannot properly support a request for reconsideration.

II. ARGUMENT

Defendants make two arguments as to why this Court should reconsider its constructions of "collaborative feedback data" and "[feedback system for] receiving information found to be relevant to the query by other users":

1) this Court misunderstood the parties' actual dispute as to these phrases, and
2) this Court failed to take into account the parties' agreement that the construction of "collaborative feedback" should include the phrase "with similar interests or needs."

Motion at 1. Neither of these reasons, however, is a proper ground for reconsideration, and Defendants fail to cite a single decision holding that either reason is proper justification for reconsideration.

A. There is No Proper Basis for Reconsideration of this Court's Previous Claim Constructions

As the record documents and this Court's claim construction ruling demonstrates, this Court carefully considered the relevant case law and Defendants' positions. This Court's claim construction Memorandum Opinion & Order ("Opinion"), dated June 15, 2012 (D.I. 171), recites and analyzes the relevant case law, and considers and rejects the very same positions that Defendants now seek to advance again in their Motion. *See* Opinion at 5-12.

Regarding the term "[feedback system for] receiving information found to be relevant to the query by other users," Defendants argue that "[i]n refusing to construe [this phrase], 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." Motion at 6. This Court's Opinion, however, states:

> "Defendants claim that there is a dispute about whether the information must come from users with similar interests or needs. However, 'district courts are not (and should not be) required to construe every limitation present in a patent's asserted claims.' *O2 Micro Int'l*, 521 F.3d at 1362. Instead, '[c]laim construction is a matter of resolution of disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims, for use in the determination of infringement.' *Id*. (quoting *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997)). A claim term 'should be construed by the Court whenever there is an actual, legitimate dispute as to the proper scope of the claims." *Sunbeam Prods., Inc. v. Hamilton Beach Brands, Inc.*, No. 3:09cv791, 2010 WL 3291830, at *1 (E.D. Va. Aug. 19, 2010) (Markman Order).
>
> Having reviewed the claims and the patent specification, the Court finds that the plain and ordinary meaning of the term ***'[feedback system for] receiving information found to be relevant to the query by other users'*** is clear and apparent from the claim language itself. The text of the term explains what the system is for (i.e., receiving information found to be relevant to the query by other users)."

Opinion at 11-12 (emphasis in original). In other words, this Court expressly considered whether the claim term required users with similar interests or needs, and rejected the notion that it did.

Similarly, this Court considered and rejected Defendants' position with respect to "collaborative feedback data." Defendants solely argue that this Court's construction was wrong because it "omitted the parties' agreed upon requirement that the collaborative feedback data correspond to 'users with similar interests or needs.'" Motion at 2 (emphasis in original). However, this Court unambiguously addressed that argument, and addressed the question as to "whether those system users must have 'similar interests or needs.'" Opinion at 9. In doing so, this Court stated "[i]n support of their argument that such a requirement exists, Defendants cite to the portion of the specification which explains that '[c]ollaborative filtering employs additional data from other users to improve search results for an individual user for whom a search is being conducted.' '420 Patent, col. 24, ll. 37-41." *Id*. This Court went on to state in response:

> "[t]he only requirement that the claim language lays out is that the data must come from system users. It does not explicitly state that these users must have 'similar interests or needs.' In fact, the claim language only makes reference to data the individuals found relevant to their respective needs. From this language, the Court will not create the additional limitation that those users must have similar interests or needs. The language in the specification to which the Defendants cite in support of their argument does not suggest that these users *must* have similar interests or needs but merely that data from those users is used to improve search results. While the definition of 'collaborative filtering' refers to users with similar interests or needs, the Court does not believe it appropriate to import this portion of the specification to limit the plain claim language and the term ***'collaborative feedback data.'***"

Id. at 10 (emphasis in original). Undisputedly, this Court considered and rejected Defendants' position. In doing so, this Court explained that the language "similar interests or needs" is referred to in defining "collaborative filtering" – not "collaborative feedback." Defendants are now doing nothing more than mischaracterizing this Court' ruling.

Further, Defendants' Motion does not cite to any case or any fact that this Court failed to consider. Instead, Defendants' Motion is based on no legally cognizable basis. This Court carefully considered these arguments and acknowledged them in its claim construction Opinion. Opinion at 8-12. The Federal Circuit has expressly held that the court is free to adopt a construction independent of those suggested by the parties. *See Exxon Chem. Patents, Inc. v. Lubrizol Corp.,* 64 F.3d 1553, 1555 (Fed. Cir. 1995) ("[T]he trial judge has an independent obligation to determine the meaning of [patent] claims, notwithstanding the views asserted by the adversary parties.").

Because this Court fully considered Defendants' positions and the controlling case law, there is no reason to reconsider this Court's Opinion. This Court has routinely denied motions to reconsider that, like Defendants' Motion, merely rehash previous arguments. *See, e.g.*, *ActiveVideo Networks*, No. 2:10-cv-248-RAJ, D.I. 757. For those same reasons, this Court should deny Defendants' Motion.

B. Defendants Are Not Entitled to Reargue Claim Construction Simply Because They Do Not Agree with This Court's Ruling

While this Court is entitled to modify its claim construction ruling, Defendants do not have the right to reargue its positions indefinitely so as to delay the claim construction process unreasonably. In fact, the primary case cited by Defendants actually supports I/P Engine's Opposition. In *ActiveVideo Networks*, No. 2:10-cv-248-RAJ, this Court denied Defendants' motion for reconsideration because Defendants sought to expand upon an argument that they failed to develop in their original brief in the form of a motion for reconsideration; in other words, Defendants sought to do nothing more than reargue previously submitted arguments.

The other two cases cited by Defendants are not applicable to the present case. First, Defendants' citation to *Lighting Ballast Control, LLC v. Philips Elecs. N. Am. Corp.*, No. 7:09-

cv-29, 2010 WL 4946343, at *10 (N.D. Tex. Dec. 2, 2010) is misplaced. There, the court cited *Jack Guttman, Inc. v. Kopykake Enters., Inc.*, 302 F.3d 1352, 1361 (Fed. Cir. 2002), for the proposition that district courts may engage in a rolling claim construction where the issues involved are complex or because the meaning of the claims is unclear from the intrinsic evidence – neither is the case here. As this Court makes clear, the intrinsic evidence establishes the meaning of its construction of "collaborative feedback data" (Opinion at 10), and the meaning of the phrase "[feedback system for] receiving information found to be relevant to the query by other users" "is clear and apparent from the language itself" based on this Court's review of the claims and the patent specification (Opinion at 12). In *Boykin Anchor Co., Inc. v. Wong*, No. 5:10-cv-591, 2012 WL 937182 (E.D.N.C. March 20, 2012), the court denied a motion to reconsider finding insufficient grounds on which to reconsider its motion.

This Court construed these claim terms after full *Markman* briefing and a comprehensive claim construction hearing on these terms. Claim construction is not a never-ending process where the constructions are to be constantly revisited and altered. In fact, the court in *Lighting Ballast Control* stated in a footnote that immediately preceded the same sentence relied upon by Defendants, that "[a] settled claim construction order is required for this case to proceed." *Lighting Ballast Control*, 2010 WL 4946343, at *10. The same is true here. Because Defendants have not provided – and cannot provide – a valid reason for reconsideration, there is no basis for this Court to reconsider its claim construction Opinion.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion for Reconsideration should be denied.

Dated: July 6, 2012

By: /s/ Jeffrey K. Sherwood

Donald C. Schultz (Virginia Bar No. 30531)
W. Ryan Snow (Virginia Bar No. 47423)
CRENSHAW, WARE & MARTIN PLC
150 West Main Street
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735

Jeffrey K. Sherwood (Virginia Bar No. 19222)
Frank C. Cimino, Jr.
Kenneth W. Brothers
Leslie Jacobs
Dawn Rudenko Albert
Charles J. Monterio, Jr.
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

Counsel for Plaintiff I/P Engine, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2012, the foregoing **OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION IN PART OF CLAIM CONSTRUCTION ORDER,** was served via the Court's CM/ECF system, on the following:

Stephen Edward Noona
Kaufman & Canoles, P.C.
150 W Main St
Suite 2100
Norfolk, VA 23510
senoona@kaufcan.com

David Bilsker
David Perlson
Quinn Emanuel Urquhart & Sullivan LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
davidbilsker@quinnemanuel.com
davidperlson@quinnemanuel.com

Robert L. Burns
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190
robert.burns@finnegan.com

Cortney S. Alexander
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
3500 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, GA 94111
cortney.alexander@finnegan.com

/s/ Jeffrey K. Sherwood