

EXHIBIT 32

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

I/P ENGINE, INC.,)
)
 Plaintiff,) CIVIL ACTION
)
 V.) 2:11cv512
)
AOL, INC., et als.,)
)
 Defendants)

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

June 5, 2012

(MARKMAN HEARING)

Before: THE HONORABLE RAYMOND A. JACKSON
United States District Judge

1 But, as I think the Court is probably very well
2 aware, we filed a motion on this, and, frankly, where we
3 started in this discussion with the defendants is they
4 started with a much, much larger number of terms.

5 THE COURT: Well, you know where the Court
6 started. If you read my order, I said ten terms, and I
7 fully expected the parties to come together and to come
8 up with just ten terms to be construed.

9 MR. SHERWOOD: Yes, your Honor, I do
10 understand. We proposed four, two of which have been
11 agreed to by the parties.

12 THE COURT: So that leaves two?

13 MR. SHERWOOD: So that leaves only two from our
14 point of view, yes, your Honor, that's right.

15 THE COURT: So these other 16 or 17 I'm looking
16 at, are these all, you are saying, from the defendant?

17 MR. SHERWOOD: Yes, your Honor, that's correct.

18 THE COURT: Well, I'm sure that's not the case.
19 Not that you are wrong, but I'm sure that they have
20 narrowed that. I will be waiting to hear that because if
21 you are only asking the Court to construe two and the
22 others that are mostly in dispute are from the defendant,
23 I'm sure the defendant understands the Court means just
24 what it said, it will construe ten. That leaves eight.

25 MR. SHERWOOD: Well, your Honor, if we look at

1 Exhibit C, the joint claim construction statement, which
2 is their list of terms -- this is their document, your
3 Honor, not ours.

4 THE COURT: Hold up one second.

5 All right. Go on.

6 MR. SHERWOOD: If you look at this document, we
7 can see that -- if you just look at the item numbered 1,
8 there are two terms there. They have grouped them
9 together, but there are no words in common between those
10 two terms, there are no record citations in common
11 between those two terms, and the Court is going to have
12 to do a different analysis with respect to each of them.
13 So my point is that if you start at the top of this list
14 and you work your way down, you will go well past ten.

15 As I said to the Court a minute ago, we only
16 proposed four, two of which have been agreed to.
17 Scanning network and combining are the two that we
18 propose are still outstanding for the Court to decide.

19 THE COURT: Scanning network and what?

20 MR. SHERWOOD: Combining.

21 THE COURT: Okay. I think I expressed some
22 concern on the phone about combining.

23 MR. SHERWOOD: I understand you did, your Honor,
24 yes.

25 THE COURT: Okay.

1 MR. SHERWOOD: So my proposal is that we don't
2 do any more than the first ten that appear here, your
3 Honor.

4 THE COURT: Well, the Court is going to have to
5 decide which ten it's going to be.

6 MR. SHERWOOD: I appreciate that, your Honor.
7 Thank you.

8 THE COURT: You are proposing only the first ten
9 and ignoring the numbers on the page?

10 MR. SHERWOOD: Right. In other words, these
11 have subparts, but we know subparts count as separate
12 issues.

13 THE COURT: Well, that would mean we would go
14 probably no farther than No. 7 on this page.

15 MR. SHERWOOD: Your Honor, actually if we went
16 to No. 7, we would still have 12, and let me point out to
17 you why that's the case.

18 If you look at No. 4, this has addressed two
19 different claims in two different patents. So it's the
20 separateness of systems in the '420 Claim 10 and then
21 another claim in another patent, claim in the '664. So
22 it's actually two issues, not one, and the same with item
23 No. 6, your Honor. So I would propose to the Court that
24 the Court cannot construe Item 6 at all.

25 The term "user" has been agreed to between the

1 they filed for the patent that's one of the
2 patents-in-suit, Lycos.com was the seventh most visited
3 web site. In 1998 to 2002, they sort of went on a
4 shopping spree purchasing more than two dozen web
5 companies on the Internet.

6 Then in 2000 because of its filter technology,
7 among other things, for producing search results, Lycos
8 was acquired by Terra Networks for \$12 billion.

9 Okay. Patents-in-suit, the first one is the
10 '420, entitled collaborative/adaptive search engine. The
11 second one is the '664 patent. It's entitled Information
12 filter system, and method for integrated content-based
13 and collaborative/adaptive feedback queries. It's quite
14 a mouthful.

15 These are foundational search engine patents,
16 your Honor. At a high level, they involved improving
17 search results. So what do I mean by improving search
18 results?

19 In search engines that we use today, you usually
20 have a box where you put in your search request. It's
21 called a query. When you put in your search request, you
22 are provided back with certain links. Those are the
23 search results.

24 What happens in between the search query and the
25 results is the methodology that produces for you the most

1 relevant results to your query. The goal of the search
2 engine is to come up with a methodology that will find
3 the best sites that are of interest to the person who put
4 in the user query.

5 A lot of times, almost all the time, the only
6 information that you have about what the user is looking
7 for is the query itself. So, again, in my example if I
8 use the word "grill" in a search engine because I'm
9 looking to buy a new barbecue, I will get links,
10 hopefully, that are related to what I am looking for,
11 barbecue grills, maybe grills on sale, maybe how to
12 grill.

13 The claims in the '420 and the '664 patent
14 relate to combining two specific measures in that
15 methodology that happens in the search engine, two
16 specific measures to improve search results. Those
17 specific measures are content and collaborative data.

18 Here's sort of an abstraction, your Honor, to
19 try and illustrate the core essence of what Mr. Lang and
20 Mr. Kosak invented.

21 On the left you have content. Generally
22 speaking, in a search engine environment this is how well
23 a piece of information matches the search query. So,
24 again, if I'm looking for grill, what I mean by content
25 data, is that the information that I am looking for, the

1 web page, for example, is a content matching my query.

2 What do I mean? Does it have the word "grill" in it?

3 Key words are a popular form of content data. What if it

4 has the word "grill" in it 15 times? When you are
5 determining how well something matches the query with

6 content-based data only, you can judge how well it
7 matches by the number of times the word you are looking

8 for appears. If it appears once, maybe you have a low

9 relevance level for content. If it appears 15 or 20
10 times, then you have a high level of content data. And

11 you if have some type of threshold in deciding with the

12 server, you can see that in a content-based filtering
13 system only, you would provide the user with the one that

14 has 15 hits rather than the one that has one hit.

15 Okay. On the other side here, we have
16 collaborative feedback. That's another filtering
17 technique. Collaborative analysis evaluates feedback
18 received from other users with similar interests or
19 needs.

20 What's that mean in the search engine world? So
21 I'm about to search and look for the word "grill" and see
22 what I get back. Ten people before me might have done a
23 search for a grill. They have similar interests. They
24 have a similar need. They are looking for a grill. When
25 the web site results show up, in the past it was ten

1 that's a 7, the rank rating is a 7. Fig. 6 also shows
2 the collaborative data input at 415. The same things
3 happens there, it moves over and you get a rating
4 predictor. Let's say again for simplicity 5.

5 So now we know that we have a document that
6 content matches the 7, collaborative matches the 5. What
7 does the patent say to do?

8 It says that these rating predictors are
9 combining for some folk combination function. The
10 combination function is described in the specification as
11 anything from a simple, weighted, additive function to a
12 far more complex neural network function. We will stay
13 simple, just average.

14 6 is the overall complete rating predictor. So,
15 you see, by combining these two pieces of data, you
16 change the value and the ranking of the document or
17 article.

18 Let me back up a second and put this in sort of
19 practical terms. Here let's assume the threshold for
20 producing the document to the user for providing it to
21 the user is 7. Under content analysis only, your Honor,
22 this document will make it. It's a 7. A 7 or better, it
23 goes. But maybe this document is not so good.
24 Content-wise it's like the example I gave earlier where
25 it's patio furniture, but I know people looking for

1 grills might purchase my patio furniture so I stick grill
2 all over the web site. So from the collaborative what
3 you see, it's low. People don't really like this that
4 much. It's not one of the top choices.

5 So when you use Mr. Lang and Mr. Kosak's
6 invention it changes from 7 in a content-only world to a
7 predictor of 6. We are now under the threshold of 7.
8 This document will be excluded. Where in the
9 content-only world it would be served up, here it gets
10 excluded.

11 Let me flip that around and show you the other
12 way. Let's assume here that the threshold is 6, a 6 or
13 above. Here the content is not so good but people really
14 seem to like this link. It's got a lot of collaborative
15 feedback. When you do the combination, it pushes me up
16 the scale so that the collaborative feedback help balance
17 out the low content. I mean, obviously, you have to have
18 high content and high collaborative, but this helps
19 people get the best results based on the information
20 that's out there. So Lang and Kosak through their
21 invention came up with an improved way to filter search
22 results combining the content analysis and collaborative
23 feedback to provide superior results.

24 In this litigation, I/P Engine accuses each of
25 the defendants of creating and using infringing apparatus

1 and using infringing methods to present relevant
2 advertisements to users of the search engines by
3 combining content data and collaborative data, and this
4 is how some of the defendants generate, essentially, all
5 of their income.

6 Okay. That concludes my tutorial on opening
7 statement, your Honor.

8 THE COURT: Thank you very much.

9 MR. PERLSON: Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. PERLSON: I will try to -- plaintiff went
12 over some of the similar concepts that we were going to
13 go over and I will try to avoid repetition as much as I
14 can, although there probably will be at least a little
15 bit.

16 Here, just as an overview, we have the two
17 patents at issue filed in December of 1998. One thing I
18 would just note is that these patents share the same
19 specification and so I think you will probably hear from
20 both of us just referring to one of them, not both of
21 them.

22 As plaintiff had indicated, the patents concern
23 a search engine system that combines collaborative-based
24 filtering with content-based filtering and the patent
25 does this with either a demand or a wire search. And as

1 If I may have the Court's indulgence, I have a
2 board here that just contains the claim language itself
3 that I think might help to illustrate one of my points,
4 and that is that the term that is being construed here as
5 it resides in this claim is collaborative feedback data.

6 I think we can all agree that data is
7 information. Whether you want to call it data or
8 information, I think that that's a neutral dispute. The
9 plaintiff made a point about that in their briefs. We
10 thought data information was a little more user friendly
11 term, but I don't think there's a big deal there. But
12 what the claim language says is that that data comes from
13 somewhere. It comes from system users.

14 Now, when you look back at my slide, what you
15 can see is that they are writing additional limitation
16 into this claim. They are saying that it comes from
17 users with similar interests or needs. So, we would have
18 two source limitations here, your Honor. It would be
19 from users with similar needs and interests, according to
20 the defendant; and then according to the claim language
21 that comes after the term that's being construed, it
22 would be from system users.

23 Now, I would submit to the Court that it's
24 either nonsensical, nobody would write that way, or it's
25 leaving certain language out of the claim because we

1 would only need to have a one-source limitation, not two.

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

12 I should point out, we have the same -- it's
13 exactly the same with respect to Claim 25, also
14 collaborative feedback data as the term to be construed
15 with a separate source limitation that resides outside
16 the claim term, your Honor. And this term only applies
17 to the '420 as well. It's not applicable to the '664.

18 So, your Honor, interestingly, both parties
19 point to the same language in the specification to
20 support their constructions, and what I would point out
21 to the Court with respect to this specification language
22 which appears here at the bottom of the slide is that it
23 is referring to the same thing that I'm talking about
24 here, which is the informs that the other users with
25 similar interests or needs have found to be relevant.

1 Now, this is a demand search environment, as I
2 think the Court just heard, and I think maybe I should
3 explain the importance of that here just briefly.

4 The patents actually have two different systems
5 that are in them, and we are only asserting the demand
6 search claims. We are not asserting wire search claims.

7 So when we want to know what somebody else
8 thinks is relevant, we don't have a profile, as
9 Mr. Perlson alluded to in his presentation, where we
10 might know something about the user. These are all
11 one-time searches that somebody just goes to the web and
12 they randomly decide they want to search for something.
13 Nobody knows anything about them. All they know is the
14 query that they entered. So the point is that when we
15 look to see who has similar needs or interests, what we
16 are looking at is who else made that same search? Who
17 else made the same query? Who asked for grills? Who
18 asked for Jaguar? And what did they click on? What did
19 they find relevant to their query? That is the
20 collaborative feedback data that is described in these
21 two claims here, your Honor.

22 As I say, there's no source limitation with
23 respect to the information. Every system user is going
24 to be making clicks, doing queries and clicking on things
25 that are results of their queries, and that is going to

1 be the source of the data, but it's the source of the
2 data because that's what the claim says, it comes from
3 the system users.

4 So, your Honor, this next slide we have tried to
5 illustrate what the difference is between the two
6 parties' constructions. The specification language both
7 parties rely upon appears in the left under the blue
8 heading, and the key part we have put in brackets at
9 capital [A], the language, that's really what's being
10 construed. "What informons other users with similar
11 interests or needs found to be relevant."

12 And you will see the plaintiff's proposal tracks
13 that language very closely. We used information instead
14 of data. As I said, we are agnostic about that. If the
15 Court feels that data is a better term to use, we have no
16 problem with that.

17 What we propose is that this term be construed
18 to mean information concerning what informons other users
19 with similar interests or needs found to be relevant.

20 Now, the defendants' proposal imports some of
21 that into their claim construction, but as I have already
22 pointed out by highlighting this claim language, they put
23 in additional source limitation, your Honor, which is not
24 appropriate. It either renders the claim language, as I
25 said, nonsensical or superfluous.

1 Your Honor, I have a couple of things I wanted
2 to point out from the plaintiff's slides which I just saw
3 this morning, so if the Court would bear with me for one
4 second here.

5 The defendants make the argument, and you will
6 hear this when they get up to present their materials,
7 repeatedly that IPE's construction does not include the
8 collaborative element. What I just want to point out to
9 the Court is the collaborative element is that which you
10 collect from the other system users who made the same
11 query as to what they found relevant to that query, and
12 our claim construction contains all of that without
13 muddying up the claim language with additional source
14 limitation.

15 If I may now, your Honor, I would like to turn
16 to the next claim term, unless the Court has any
17 questions?

18 THE COURT: No, that's fine. The Court
19 understands it.

20 MR. SHERWOOD: Thank you.

21 And we see a similar kind of issue here with
22 respect to the '664 and the two claims that are at issue
23 here. The language is different because patent lawyers,
24 I have learned over doing these cases, like to express
25 the same concepts in different ways. We could probably

1 cut down the number of patents we have in our system if
2 they didn't do that, but that's what they do.

3 And so here what we are talking about, again, is
4 a feedback system for receiving information found to be
5 relevant to the query by other users. Our first position
6 with respect to this term, actually, your Honor, is that
7 we don't think the Court needs to construe it. The Court
8 has already declined to construe the term "relevant." We
9 have an agreement with respect to the meaning of the term
10 "relevance," which I suspect is going to inform the
11 parties with respect to the meaning of the term
12 "relevant." And we have an agreement with respect to the
13 term "users," and we have an agreement with respect to
14 the term "query." So it seems to me there's not really a
15 whole lot left for the jury to have to figure out, just
16 some plain words that reside in between those words that
17 we already have an agreement for.

18 But, in any event, if we look at the
19 defendant -- actually, your Honor, let me point one other
20 thing out to you. This patent drawing that we have down
21 at the bottom of this slide is from Fig. 9 of the patent
22 and it illustrates the system of receiving what I'm going
23 to call feedback or collaborative data. And what you can
24 see is that down at the bottom left there's a box that
25 says other user and it shows an arrow going up to the

1 feedback processor that Mr. Cimino talked about earlier.

2 All that this claim term here is describing is
3 the receipt into that processor of the informons that the
4 other users found to be relevant to the query. It's
5 nothing more than that, your Honor. And as I have
6 pointed out, there's a separate source limitation here,
7 too, just as there is in the '420 patent for this
8 information. There's no need to have two source
9 limitations here, any more than there is in the '420
10 patent.

11 The defense wants to layer on here by saying
12 that the information can only come from certain users.
13 It can only come from other users, which is what we see
14 in the patent, but they want to add that it can also only
15 come from users with similar interests or needs. But we
16 already know it's coming from users with similar
17 interests or needs because, in fact, they are the ones
18 who clicked on the search results. That's what we are
19 analyzing, and the patent and the claim construction that
20 the plaintiff has proposed are very clear with respect to
21 that, I think, your Honor.

22 There's some additional issues with respect to
23 the defendants' construction. They put in the word
24 "determining," as the Court can see. The claim language
25 is receiving. Receiving and determining are not

1 synonymous, your Honor. There's no suggestion in the
2 patent that they are the same, and I think we can tell,
3 again, from just plain English usage that they are, in
4 fact, very different things.

5 In addition, as I have already alluded to, they
6 would equate other users with users with similar
7 interests or needs. Those two are not the same, and I
8 would suggest to the Court, in fact, that it's redundant
9 because we know that these are users with similar
10 interests or needs because of the fact that they have
11 clicked -- they have entered similar queries and they
12 have clicked on informons that the system is going to
13 determine are relevant to the query.

14 It's a noninfringement position which defendants
15 are pretty honest about, which is they are saying in our
16 system we don't keep track of information about the
17 users. We don't know whether their interests are similar
18 or their needs are similar. That's the profile system.
19 Those are other claims in the patents which we are not
20 asserting.

21 The only way to know whether people have similar
22 interests or needs, just as is explained in the patent,
23 is to look and see what they click on, and that's exactly
24 what this claim construction would entail.

25 Your Honor, I would reserve my remarks on that