

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALMONDNET, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

ORDER

10-cv-298-bbc

In this patent infringement case, the parties have filed cross motions for the construction of several terms in plaintiff AlmondNet, Inc.'s United States Patents Nos. 6,973,436, 7,072,853, 7,454,364 and 7,822,637, all of which relate to internet advertising, and defendant Microsoft Corporation's United States Patent No. 6,632,248, relating to the customization of webpages.

In the magistrate judge's preliminary pretrial conference order, dkt. #14, he explained that it would be each "party's burden to persuade the court that construction of each specified term is necessary to resolve a disputed issue concerning infringement or invalidity." Id. at 2. The court imposes that requirement to avoid deciding abstract questions that have no bearing on the lawsuit. Citizens for a Better Environment v. Steel Co., 230 F.3d 923,

927 (7th Cir. 2000) (federal courts have no authority to issue advisory opinions). For each of the requested terms, the parties have explained adequately how their disputes about the meaning of the term are related to disputes about whether the accused products are infringing or the patents are invalidated by prior art. Accordingly, I will grant the parties' motions to construe these terms. Additionally, because it would be beneficial to hear oral argument on the matter, a claims construction hearing will be held on April 15, 2011 at 9:00 a.m., the date designated in the magistrate judge's most recent scheduling order, dkt. #27.

ORDER

IT IS ORDERED that a hearing will be held on April 15, 2011 at 9:00 a.m regarding the parties' disputes on the meaning of the following claim terms:

1. From United States Patents Nos. 6,973,436 and 7,072,853:

- A. "transact" ('436 pat., cl. 1; '853 pat., cl. 1);
- B. "economic value contribution" ('436 pat., cl. 1, '853 pat., cl. 1);
- C. "to each of at least some of the plurality of attributes an economic value contribution" ('436 pat., cl. 1; '853 pat., cl. 1);
- D. "spreading the attributes of a preponderance of the responses to form a number of combinations of various attributes" ('436 pat., cl. 1; '853 pat., cl. 1);
- E. "selecting the combination . . . that yields the highest price" ('436 pat., cl. 1; '853 pat., cl. 2); and

F. “visitor” (‘436 pat., passim; ‘853 pat., passim).

2. From United States Patents Nos. 7,454,364 and 7,822,637:

A. “delivery of” (‘364 pat., cl. 1, 11, 15 and ‘637 pat., cl. 1);

B. “bid[s] for delivery of an associated advertisement” (‘364 pat., cl. 1, 11, and ‘637 pat., cl. 1);

C. “price for delivery of the advertisement” (‘364 pat., cl. 1, 11, 15 and ‘637 pat., cl. 1);

D. “each of which plurality of bids” (‘364 pat., cl. 1, 11 and ‘637 pat., cl. 1);

E. “identifying . . . which of the bids yields the greatest overall price for delivery of the associated advertisement to the visitor visiting the communications node, the overall price for each bid being based on the total (‘364 pat., cl. 1, 11, 15);

F. “identifying . . . a bid based on the total” (‘637 pat., cl. 1); and

G. “visitor” (‘364 pat., passim; ‘637 pat., passim).

3. From United States Patent No. 6,632,248:

A. “obtaining customization information from the corresponding user” (‘248 pat., cl. 1);

B. “obtaining HTML document customization information from the user of the client computer” (‘248 pat., cl. 11, 17, 18-19); and

C. “obtaining customization information from a first client computer” (‘248 pat., cl. 20).

At the April 15 hearing, each side will have 90 minutes to present its argument and

offer testimony in support of its proposed constructions.

Entered this 10th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge