

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NETWORK-1 TECHNOLOGIES, INC.,

Plaintiff,

v.

GOOGLE LLC and YOUTUBE, LLC,

Defendants.

14 Civ. 2396 (PGG)

14 Civ. 9558 (PGG)

**PLAINTIFF NETWORK-1 TECHNOLOGIES, INC.’S
REPLY STATEMENT OF MATERIAL FACTS FOR WHICH THERE IS NO GENUINE
ISSUE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

Pursuant to Local Civil Rule 56.1, Plaintiff Network-1 Technologies, Inc., hereby submits the following reply statement of material facts for which it contends there is no genuine issue to be tried in support of motion for summary judgment against Google LLC and Youtube, LLC (collectively “Google”) in response to the statement submitted by Google.

I. FACTS FOR WHICH THERE IS NO GENUINE ISSUE CONCERNING GOOGLE’S INVALIDITY ASSERTIONS REGARDING THE “CLANGO” PRIOR ART REFERENCE

A. Google Relies On The “kd-tree search algorithm” Allegedly Present In The Clango “System” To Satisfy At Least One Element Of Every Claim For Which That System Is Claimed To Be Prior Art

1. On or about December 20, 2019, Google served the expert report of Dr. Trevor Jackson Darrell regarding invalidity of the Patents in suit. Affidavit of Brian D. Ledahl, Ex. 1, Darrell report.¹

Google Response

Undisputed

2. In his report, Dr. Darrell asserts that Clango was a system offered by a company called Audible Magic for identifying music that a computer user was playing on their computer over the Internet. Ex. 1, Darrell Report at pp. 64-65.

Google Response

Undisputed

3. Dr. Darrell opines that the Clango “system” anticipated all elements of claim 17 of the asserted U.S. Patent No. 8,010,988 (the “988 patent”), rendered obvious asserted claims 33, 34, and 35 of the asserted U.S. Patent No. 8,205,237 (the “237 patent”) (standing alone), and also rendered obvious all of the asserted claims of the patents-in-suit, including claims 1, 8, 10, 16, 18, 25, 27, and 33 of the asserted U.S. Patent No. 8,904,464 (the “464 patent”) in combination

¹ All exhibits are attached to the concurrently filed affidavit of Brian D. Ledahl.

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

with a prior art patent called Chen. Ex. 1, Darrell Report at pp. 89, 170, 187, 204, 209, 226, 227, 231, 236, 251, 253, 254, 257, 262, 263, 265.

Google Response

Undisputed

4. Claim 17 of the '988 patent (which depends on claim 15) requires identification of an electronic work “based on a non-exhaustive search identifying a neighbor,” “wherein the non-exhaustive search is sublinear.” Ex. 2, '988 Patent.

Google Response

Undisputed

5. Dr. Darrell contends that this claim element of claim 17 was disclosed in the Clango system through the “lookup algorithm” of the system that Dr. Darrell describes as a “kd-tree search algorithm.” Ex. 1, Darrell Report at ¶¶ 181; 187; 207.

Google Response

Network-1’s statement is ambiguous with respect to the phrase “disclosed in the Clango system,” and Google disputes this Statement to the extent Network-1 mischaracterizes Dr. Darrell’s opinion. Dr. Darrell opines that the prior invention of Clango’s kd-tree search algorithm, along with the public use of that search algorithm, meets the limitations in claim 17 quoted in Network-1’s Statement of Fact No. 4. Ex. 1 (Darrell Report) at ¶¶ 181-99, 207-12.

Network-1 Reply

Google does not dispute this fact.

6. Claim 33 of the '237 patent requires “using the media work extracted features to perform a sublinear approximate nearest neighbor search of reference extracted features.” Ex. 3, '237 Patent.

Google Response

Undisputed

7. Claims 34 and 35 depend from claim 33 and do not further modify this claim element. *Id.*

Google Response

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

Undisputed

8. Dr. Darrell contends that this element of claims 33-35 was disclosed in the Clango system by the same “kd-tree search algorithm” referenced above in connection with the ‘988 patent. Ex. 1, Darrell Report at ¶¶ 351-352.

Google Response

Network-1’s statement is ambiguous with respect to the phrase “disclosed in the Clango system,” and Google disputes this Statement to the extent Network-1 mischaracterizes Dr. Darrell’s opinion. Dr. Darrell opines that the prior invention of Clango’s kd-tree search algorithm, along with the public use of that search algorithm, meets the limitation quoted in Network-1’s Statement of Fact No. 6. Ex. 1 (Darrell Report) at ¶¶ 351-52.

Network-1 Reply

Google does not dispute this fact.

9. Where Dr. Darrell relies on Clango in combination with some other asserted prior art, he also relies on Clango for disclosure of the search elements of the claims. *See* Ex. 4, Darrell Deposition at 236:7-15.

Google Response

Network-1’s statement is ambiguous with respect to the phrase “relies on Clango for disclosure,” and Google disputes this Statement to the extent Network-1 mischaracterizes Dr. Darrell’s opinion. One of Dr. Darrell’s opinions is that a prior art patent called “Chen,” when combined with the prior invention of the Clango system, and/or the public use of that system, renders obvious all asserted claims of the ’988, ’237, and ’464 Patents. Ex. 1 (Darrell Report) at ¶¶ 298-325, 382-98, 433-35, 447-49, 463-96, 500-02, 506-07, 511-12, 520-30, 534-35, 539-40, 544. In this analysis, Dr. Darrell opines that the non-exhaustive, near neighbor, and/or sublinear elements of the search portion of Network-1’s claims are satisfied by the prior invention of Clango’s kd-tree search algorithm, and the public use of that search algorithm. *Id.* Dr. Darrell does not otherwise rely on the combination of the prior invention of the Clango system, and/or the public use of the Clango system, with another prior art reference.

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

Network-1 Reply

Google does not dispute this fact.

10. With respect to claim 17 of the '988 patent, Dr. Darrell relies on a combination of Clango with the Chen reference. Ex. 1, Darrell Report at ¶ 298.

Google Response

Network-1's statement is ambiguous with respect to whether Network-1 contends Dr. Darrell's sole reliance on Clango in his analysis of claim 17 of the '988 patent "relies on a combination of Clango with the Chen reference," and Google disputes this statement to the extent Network-1 mischaracterizes Dr. Darrell's opinion. Dr. Darrell opines that claim 17 of the '988 Patent is anticipated by the prior invention of the Clango system, and/or the public use of the Clango system. Ex. 1 (Darrell Report) at ¶¶ 158-213. Independently, Dr. Darrell opines that claim 17 of the '988 Patent is obvious in light of Chen combined with the prior invention of the Clango system, and/or the public use of that system. Ex. 1 (Darrell Report) at ¶¶ 298-325.

Network-1 Reply

Google does not dispute this fact.

11. In this combination, Dr. Darrell points to the same "kd-tree search" discussed above as allegedly disclosing the "non-exhaustive search identifying a neighbor" "wherein the non-exhaustive search is sublinear" claim element. Ex. 1, Darrell Report at ¶¶ 311, 313, 319.

Google Response

Network-1's statement is ambiguous with respect to the phrase "disclosing," and Google disputes this statement to the extent Network-1 mischaracterizes Dr. Darrell's opinions. As discussed above, Dr. Darrell opines that claim 17 of the '988 Patent is obvious in light of Chen combined with the prior invention of the Clango system, and/or the public use of that system. Ex. 1 (Darrell Report) at ¶¶ 298-325. In this opinion, Dr. Darrell opines that the non-exhaustive, near neighbor, and/or sublinear elements of the search portion of claim 17 are satisfied by the prior invention of Clango's kd-tree search algorithm, and the public use of that search algorithm.

Id.

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