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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

CONTENTGUARD HOLDINGS, INC. ) (  
) ( CIVIL DOCKET NO.  
) ( 2:13-CV-1112-JRG  
VS. ) ( MARSHALL, TEXAS  
) (  
AMAZON.COM, INC., ET AL. ) ( FEBRUARY 6, 2015  
) ( 1:00 P.M.

CLAIM CONSTRUCTION HEARING  
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: (See sign-in sheets docketed in minutes of this hearing.)

FOR THE DEFENDANTS: (See sign-in sheets docketed in minutes of this hearing.)

COURT REPORTER: Shelly Holmes, CSR-TCRR  
Official Reporter  
United States District Court  
Eastern District of Texas  
Marshall Division  
100 E. Houston Street  
Marshall, Texas 75670  
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(Proceedings recorded by mechanical stenography, transcript

1 "associated." They changed the glossary definitions to get rid  
2 of the statements, usage rights and fees are attached to a  
3 digital work. They got rid of the statement a key feature of  
4 the present invention is to permanently attach usage rights to  
5 a digital work. They tried to broaden the scope of the claims  
6 by adding the word "associated" instead of the word "attached."  
7 When they used the word "attached," it had its common and  
8 ordinary meaning. They recognize what that is, and that was  
9 more limited than associated.

10 On that note, Your Honor, I -- I want to point out  
11 something that's very misleading in the -- in the presentation  
12 from ContentGuard.

13 In their slides, they cite to you the claims of the  
14 '859 patent which talk about association. They cite to you  
15 portions of the '859 patent from the summary of the invention,  
16 which is in Column 6. Those uses of the word "associated" and  
17 that reference in Column 6 in the '859 patent was not in the  
18 1994 specification that they're claiming the benefit of. That  
19 was added when the '859 patent was filed in January of 2003.  
20 That language does not exist in the priority application that  
21 they want the benefit of.

22 If they want the benefit of that language, then they  
23 have to take the filing date of the '859 patent as their  
24 priority date because that's when the language was added.

25 THE COURT: All right. What else, counsel?

1 or 8:00 o'clock tonight, and that, I assure you, is not going  
2 to happen. The time is yours, but we will go as far as the  
3 time allows us to go. I'm not going to extend this  
4 indefinitely. So I suggest to you that you condense your  
5 arguments to the most salient points so that we can pick up the  
6 pace.

7 With that, we'll take a short recess.

8 COURT SECURITY OFFICER: All rise.

9 (Recess.)

10 COURT SECURITY OFFICER: All rise.

11 THE COURT: Please be seated.

12 All right. We'll continue with the claim construction  
13 argument. Our next term is "manner of use," and I'll hear from  
14 the Plaintiff.

15 MR. COTE: Your Honor, may I make two minor points on  
16 the presentation on the permanently attached argument because  
17 I've heard some things that were inconsistent completely with  
18 the record, and it's troubling.

19 THE COURT: In light of my prior comments before the  
20 recess, proceed.

21 MR. COTE: Thank you.

22 THE COURT: The time you use is your own.

23 MR. COTE: So we heard Defendants' counsel tell the  
24 Court in very affirmative statements that the description tree  
25 storage does not contain the usage rights. But I want to

1 remind the Court that at Column 9, Lines 10 through 25,  
2 there's -- actually it's Line -- the lines aren't there, but  
3 you can see in this passage, it expressly says that the  
4 description tree file includes a rights portion. We can see  
5 that over here on the right in Figure 7. It's expressly  
6 stated, we're talking about the description tree file. And it  
7 expressly states: Wherein that rights portion -- wherein the  
8 granted rights and status are maintained.

9           So there's no question in the spec that the usage  
10 rights are maintained in -- in the description tree. There's  
11 no question in the specification that the description tree is  
12 stored in the description tree storage separate from the  
13 content storage. And I wanted to bring that to the Court's  
14 attention.

15           The other thing I'd like to bring to the Court's  
16 attention is I heard him say emphatically that the teachings in  
17 the patent of permanently attached as meaning associated with,  
18 that we pointed to the Court -- pointed the Court to here on  
19 Slide 38 were not in the originally filed application. That is  
20 utterly false. And you will find those in the originally filed  
21 application. I encourage the Court to look. The patent did  
22 not just teach physical attachment. It did not teach permanent  
23 attachment in its ordinary meaning. The patent taught  
24 permanently attached as associated with.

25           And the patent makes clear, finally, Your Honor, that

1 constructions is how to capture the specification teaching that  
2 a meta-right is something different than a usage right.

3           And ContentGuard's construction, we think, gets that  
4 by using language directly from the specification about how  
5 actions to content did not result from exercising a meta-right,  
6 whereas Defendants' construction seems like an attempt to  
7 paraphrase the specification. And to us, it's ambiguous and  
8 unclear because the language of being distinct from a usage  
9 right, that could be argued to mean different things. That  
10 could mean not a usage right or that could mean different than  
11 one or more usage rights.

12           Our -- our construction, on the other hand, is  
13 directly from the specification which says that there's a  
14 difference between meta-rights and usage rights and that  
15 actions to content did not result from exercising meta-rights.

16           And that's it for this one term, Your Honor.

17           THE COURT: Let me hear from the Defendants, please.

18           MR. PRITIKIN: Good afternoon, Your Honor.

19           THE COURT: Good afternoon.

20           MR. PRITIKIN: David Pritikin. I've been waiting all  
21 afternoon.

22           THE COURT: Now you have your chance.

23           MR. PRITIKIN: Right.

24           THE COURT: I'll hear from you now.

25           MR. PRITIKIN: I don't think there is an enormous

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