

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

ALFONSO CIOFFI, an individual,
MELANIE ROZMAN, an individual,
MEGAN ROZMAN, an individual, and
MORGAN ROZMAN, an individual,

Plaintiffs,

vs.

GOOGLE, INC.

Defendants.

Case No. 2:13-cv-103-JRG-RSP

JURY TRIAL DEMANDED

**PATENT LOCAL RULE 4-3 JOINT CLAIM CONSTRUCTION AND
PREHEARING STATEMENT**

Pursuant to local Patent Local Rule 4-3 of the United States District Court for the Eastern District of Texas and the Court's Docket Control Order (Dkt No. 32), entered September 26, 2013, Plaintiffs Alfonso Cioffi, Melanie Rozman, Megan Rozman, and Morgan Rozman (together, "Plaintiffs") and Defendant Google, Inc. ("Defendant") (collectively, the "Parties"), file this Joint Claim Construction and Prehearing Statement. Plaintiffs and Defendant will be addressing the claim terms of asserted U.S. Patent No. RE43,103 (the "'103 patent"), U.S. Patent No. RE43,528 (the "'528 patent"), U.S. Patent No. RE43,529 (the "'529 Patent"), and U.S. Patent No. RE43,500 (the "'500 Patent") (collectively, the "patents-in-suit").

A. Agreed Upon Claim Terms, Phrases or Clauses (P.R. 4-3(a)).

The Parties agree upon the following terms, phrases or clauses:

“A computer program product comprising . . . an intelligent cellular telephone capability with a secure web browser . . . configured to:”	RE500 – claim 41	The preamble is limiting.
“A computer program product . . . configured to . . . open the first web browser process”	RE500 – claim 41 RE528 – claim 64	The preamble is limiting.
“A computer program product . . . configured to . . . open a first web browser process”		

B. Disputed Claim Terms, Phrases or Clauses (P.R. 4-3(b)).

Pursuant to Local Patent Rule 4-3(b), the chart attached as **Exhibit A** to this Joint Statement contains Plaintiffs’ proposed constructions and supporting evidence for each disputed claim term, phrase, or clause of the patents-in-suit, and the chart attached as **Exhibit B** to this Joint Statement contains Defendant’s proposed constructions and supporting evidence for each disputed claim term, phrase, or clause of patents-in-suit.

C. Anticipated Length of Time for Claim Construction Hearing (P.R. 4-3(c)).

The parties have met and conferred in good faith regarding the constructions of terms and have narrowed the issues for this Court to resolve. The Parties anticipate that the hearing will last for approximately 3 hours, 90 minutes per side.

D. Witnesses and Experts (P.R. 4-3(d))

The Parties do not intend to call any witnesses at the hearing. The Parties do not believe a technical expert is required to construe the disputed claim terms. Neither Party has identified any expert testimony as extrinsic evidence for claim construction purposes, but both parties have identified expert testimony on questions of indefiniteness which will be submitted by declaration and deposition transcript citations.

E. Other Issues (P.R. 4-3 (e)).

Defendant's Statement: Rule 4-3(e) requires the parties to raise “any other issues which might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing, and proposed dates, if not previously set, for any such prehearing conference.” With the Court’s permission, the parties have submitted letter briefs requesting to address the issue of improper subject matter recapture in the reissue claims. As Plaintiffs are aware, these letter briefs are currently pending before the Court. Defendant raises this issue because the letter briefs concern a dispositive issue that may impact the number of claims and claim terms to be addressed by the Court during claim construction. For this reason, it is in the interests of judicial efficiency to address the issue now.

Defendant respectfully requests that the Court adopt the following briefing schedule for the recapture arguments in order address this dispositive issue at the claim construction hearing in August: Defendant’s Opening Brief due July 14, 2014, Plaintiffs’ Responsive Brief due July 28, 2014 and Defendant’s Reply Brief due August 4, 2014.

Plaintiffs' Statement: The Court should not set summary judgment briefing on the issue of recapture. Defendant is improperly attempting to gain a second bite at early summary judgment on the issue of recapture. Defendant previously requested and received scheduled dates for when it could file a letter brief requesting leave to file early summary judgment on recapture, and if the Court granted leave, when it must file its motion for summary judgment on recapture. Dkt. #32.¹ Defendant submitted its letter brief requesting leave to file summary judgment, and the Court did not grant leave before the February 14, 2014 deadline (and has since not granted leave, or ruled on the request). It is improper for Defendant to attempt to gain a

¹ The DCO states that “If leave is granted for Google to file a Motion for Summary Judgment of Invalidity Based on Improper Recapture under 35 U.S.C. § 251, Google to file motion” by February 14, 2014.

second bite at the issue by requesting the Court revisit the issue and just lump it in with claim construction. It should also be noted that pursuant to PR 4-1, 4-2 and 4-3, the parties engaged in several meet and confers over the past month regarding claim construction. Not once was the issue of recapture ever raised, or that it should be included as part of claim construction, or what that schedule would even look like. On the very last day to file the P.R. 4-3 Joint Claim Construction Statement, at 4:00 p.m. PST in the afternoon, Defendant raised the issue of addressing recapture during claim construction for the first time by including it in its initial mark-up of the Joint Claim Construction Statement. Defendant's last ditch effort to insert issues of recapture into claim construction is contrary to (1) the Court's summary judgment letter briefing process, (2) the DCO, and (3) the good faith requirement of meet and confer over important issues such as requesting schedules for early summary judgment briefing, and therefore should be rejected by the Court.

DATED: June 2, 2014

Respectfully submitted,

By: /s/ Charles Ainsworth

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DATED: June 2, 2014

Respectfully submitted,

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