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
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(Proceedings recorded by mechanical stenography, transcript

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

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

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

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

THE COURT: All right. What else, counsel?

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

With that, we'll take a short recess.

COURT SECURITY OFFICER: All rise.

(Recess.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

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

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

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

MR. COTE: Thank you.

THE COURT: The time you use is your own.

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

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

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

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

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

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

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

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

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

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

MR. PRITIKIN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

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

THE COURT: Now you have your chance.

MR. PRITIKIN: Right.

THE COURT: I'll hear from you now.

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

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