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

Personalized Media Communications, LLC,	§ § §	
Plaintiff,	§ §	Civil Action No. 2:12-cv-68
v.	§ §	JURY DEMANDED
Zynga, Inc.,	§ § §	
Defendant.	§	

PLAINTIFF PERSONALIZED MEDIA COMMUNICATIONS, LLC'S OPENING CLAIM CONSTRUCTION BRIEF

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I.   Introduction

This lawsuit arises from Zynga's infringement of the following claims from four of Personalized Media Communication, LLC's ("PMC") patents: Claims 1, 3, 4, 6, 9, and 11 of U.S. Patent No. 7,860,131 ("the '131 patent," attached as Ex. 1), Claims 17, 18, 19, 22-24, and 28 of U.S. Patent No. 7,734,251 ("the '251 patent," attached as Ex. 2), Claims 1, 2, 3, 6, 11-13, and 15 of U.S. Patent No. 7,908,638 ("the '638 patent," attached as Ex. 3), and Claims 1-7 and 9 of U.S. Patent No. 7,797,717 ("the '717 patent," attached as Ex. 4) (collectively, "the Asserted Claims" from "the Asserted Patents").

The four Asserted Patents are part of a large family of related patents that trace their priority back to a U.S. patent application filed on November 3, 1981, and a continuation-in-part application filed on September 11, 1987. Claim terms from related patents were previously construed, most recently in *Personalized Media Communication, LLC v. Motorola, Inc.,* 2:08-cv-70-CE (E.D. Tex.) in a claim construction order issued on September 30, 2011. *Personalized Media Commc'n, LLC v. Motorola, Inc.,* No. 2:08-CV-70-CE, 2011 U.S. Dist. LEXIS 112590 (E.D. Tex. Sept. 30, 2011), ECF No. 271 ("the EchoStar Order"), attached as Ex. 5. Two of the claim terms at issue in the EchoStar Order are also at issue in this case.[1] The EchoStar Order includes a summary of the prior claim construction proceedings. *See* Ex. 5 at 1-3.

The file history of one of the Asserted Patents, the '251 patent, includes a Decision on Appeal[2] decided by the Board of Patent Appeals and Interferences on March 20,

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[1] "Control signal" and "Instruct Signals"
[2] *Ex parte Harvey,* No. 2007-1837 (B.P.A.I. Mar. 20, 2009) ("the '251 Board Decision"), attached as Ex. 6.

2009, and a Decision on Request for Rehearing[3] decided on June 24, 2009. These decisions discuss some of the terms at issue in this case.[4]

At a high level, the Asserted Patents describe methods and systems for delivering personalized programming. For example, this programming can include "general information applicable to large audiences" (such as "stock prices rose today in heavy trading") combined with "information of specific relevance to each particular user in the audience" (such as "but the value of your stock portfolio went down"). Ex. 3 at 1:57-65.[5] Several examples of personalized programming from the Asserted Patents are described in the technical tutorial that was submitted concurrently with this Claim Construction Brief.

The inventions in the Asserted Patents are explained using numerous examples and platforms as illustrations, but, as the Asserted Patents also explain, the inventions are not limited to just those examples and platforms. The disclosed system has wide applicability, involving "the fields of computer processing, computer communications, television, radio, and other electronic communications." *Id.* at 1:25-32. "The programming may be delivered by **any** means including over-the-air, hard-wire, and manual means."[6] *Id.* at 7:11-13. The term "programming" is defined broadly:

> The present invention consists of an integrated system of methods and apparatus for communicating programming. The term "programming" refers to **everything that is transmitted electronically to entertain, instruct or inform**, including television, radio, broadcast print, and computer programming was well as combined medium programming.

Id. at 6:29-34. Further, a key feature of the disclosed inventions is expandability:

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[3] *Ex parte Harvey,* No. 2007-1837 (B.P.A.I. June 24, 2009) ("the '251 Rehearing Decision"), attached as Ex. 7.
[4] "Locally generated" (as well as four of the terms with agreed constructions)
[5] All references to the patent specifications are in the form "Column:Lines."
[6] All emphasis is added unless otherwise noted.

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