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
CLAIM CONSTRUCTION REPLY BRIEF

Table of Contents

Table of Authorities

I.   Introduction

While all agree that the Court has an obligation to resolve fundamental disputes regarding the scope of claim terms, Zynga argues for constructions that require the Court to engage in an exercise in redundancy by redrafting claim language that needs no construction. In so doing, Zynga seeks to improperly saddle the claim terms with limitations from preferred embodiments and elsewhere. Under Zynga's proposals, subscriber becomes paying subscriber, programming becomes simultaneously broadcast programming, complete becomes truly complete in its final form, data becomes factual data, station becomes stationary station, commercial becomes simultaneously broadcast advertisement, audio becomes audible words, and schedule becomes predetermined schedule.

Instead, this Court should resolve these claim disputes simply by rejecting Zynga's overly narrow limitations and relying instead on the plain and ordinary meaning of the terms. *See Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1207 (Fed. Cir. 2010) ("Unlike O2 Micro, where the court failed to resolve the parties' quarrel, the district court rejected Defendants' construction, which required an IP address. … In this situation, the district court was not obligated to provide additional guidance to the jury."). Zynga's constructions should be rejected.

II.   "Subscriber"

Zynga complains that PMC's proposal would have the term "subscriber" mean "any type of user." Zynga's Responsive Claim Construction Br. ("Zynga Br.") 3, ECF No. 80 (emphasis original). Yet Zynga's proposal would improperly limit the term to just one type – ignoring the "many different classes of subscriber" discussed in the patent and in PMC's opening brief. *See* PMC's Opening Claim Construction Br. ("PMC Br.") 5-9, ECF No. 77; PMC Br. Ex. 2 at 272:64-67, ECF No. 77-2 ("Ex. 2").

Zynga incorrectly argues that PMC did not cite to any part of the specification that uses

the term "subscriber" to refer to one who has not agreed to pay for content. One example cited by PMC was the use of "subscribers" to refer to the millions of people who view "Wall Street Week" from a "conventional television network." Ex. 2 at 11:19-35. Another example cited by PMC was the "subscriber" who "decides to watch a particular television program." Ex. 2 at 209:60-67. In neither case is there an obligation to pay. *See id.* at 1:31 ("television is easy for subscribers to use"); 14:51-52 ("unlike conventional television where each subscriber views only programming viewed by every other subscriber").

Zynga's citations from the prosecution history simply establish a point that is not in dispute – there is a class of subscribers to which information is offered on condition of payment. *See* Ex. 2 at 15:16-18. The issue is not whether such a class of subscribers exists, but rather is whether other classes of subscribers also exist – and they do. *See* PMC Br. 5-9.

Zynga argues that "subscriber" cannot mean "user" because the claims use both terms. However, the claims also use both "data" and "information," and the parties have agreed that those terms have the same meaning. *See* PMC Br. 4 (agreed construction of "user specific data"). Further, claim terms that are used interchangeably in a patent can be assigned the same meaning. *See Bid For Positions, LLC v. AOL, LLC*, 601 F.3d 1311, 1317-18 (Fed. Cir. 2010). Such is the case with "user" and "subscriber:"[1]

> For example, only at **subscriber** stations where **user** specific stock data is maintained systematically and up-to-date can the program instruction set of the first message of the "Wall Street Week" example generate FIG. 1A images that actually show the performance of the portfolios of the **subscribers** of said stations.

PMC Br. Ex. 4 at 231:4-9, ECF No. 77-4 ("Ex. 4"); *see id.* at 9:31-33 (referring to FIG. 1A as a "**user** specific graphic"); Ex. 2 at 288:60-63 ("**user** specific **subscriber** datum").

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[1] All emphasis is added unless indicated otherwise.

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