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

PALTALK HOLDINGS, INC.,	§	
	§	
Plaintiff,	§	
	§	**Civil Action No. 2:06cv367-DF**
vs.	§	
	§	**JURY TRIAL DEMANDED**
MICROSOFT CORP.,	§	
	§	
Defendant.	§	
	§	

CLAIM CONSTRUCTION ORDER

Before this Court is PalTalk's Corrected Second Opening Claim Construction Brief. Dkt. No. 82. Also before the Court are Microsoft's updated response, PalTalk's second reply, and Microsoft's sur-reply. Dkt. Nos. 80, 83 & 86. The Court held a hearing on January 17, 2008. Dkt. Nos. 91 & 94. After considering the patents, arguments of counsel, and all other relevant pleadings and papers, the Court finds that the claims of the patents-in-suit should be construed as set forth herein.

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TABLE OF CONTENTS

I. BACKGROUND 1

II. LEGAL PRINCIPLES OF CLAIMS CONSTRUCTION 1

III. THE PATENTS-IN-SUIT 2

IV. PRIOR LITIGATION 5
- A. The *HearMe* Litigation 5
- B. Collateral Estoppel does not Apply 6
- C. Judicial Estoppel Does Not Apply 7

V. CLAIMS AT ISSUE 8

VI. CLAIM CONSTRUCTION 12
- A. Agreed Terms 12
- B. Disputed Terms 13
  - (I) "Aggregating" and "Aggregated 13
    - (1) The Parties' Positions 13
    - (2) Construction 14
  - (ii) "Aggregating, by said Server in a Time Interval Determined in Accordance with a Predefined Criterion, said Payload Portions of Said Messages to Create an Aggregated Payload" . . 21
    - (1) The Parties' Positions 21
    - (2) Construction 22
  - (iii) "Aggregating Said Payload Portions," And "Aggregated Payload" 25
    - (1) Parties' Positions 25
    - (2) Construction 26
  - (iv) "Aggregated Message 27
    - (1) The Partes' Positions 27
    - (2) Construction 27
  - (v) "Group Messages" 27
    - (1) The Parties' Positions 27
    - (2) Construction 28
  - (vi) "List of Message Groups 30
    - (1) The Parties' Positions 30
    - (2) Construction 30
  - (vii) "Suppressing" 31
    - (1) The Parties' Positions 31
    - (2) Construction 32
  - (viii) "Server Message" 33
    - (1) The Parties' Positions 33
    - (2) Construction 34

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(ix) "Shared Interactive Application" 35
(1) The Parties' Positions 35
(2) Construction 35
(x) "Wherein/whereby said Aggregated/Server Message keeps the Shared Interactive Application Operating Consistently" 38
(1) The Parties' Positions 38
(2) Construction 38

VII. CONCLUSION 39

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MEMORANDUM AND OPINION

I. BACKGROUND

On September 12, 2006, PalTalk Holdings, Inc. ("PalTalk") sued Microsoft Corp. ("Microsoft") for patent infringement relating to United States Patents 5,822,523 (the "'523 Patent"), and 6,226,686 (the "'686 Patent"). Complaint, Dkt. No. 1. Both asserted patents have the same title, which is "Server-group messaging system for interactive applications." Microsoft generally denies all of PalTalk's allegations and further counterclaims for declaratory judgment of non-infringement and invalidity with respect to the asserted patents. Answer, Dkt. No. 19.

II. LEGAL PRINCIPLES OF CLAIMS CONSTRUCTION

A determination of patent infringement involves two steps. First, the patent claims are construed, and, second, the claims are compared to the allegedly infringing device. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1455 (Fed. Cir. 1998) (en banc). The legal principles of claim construction were recently reexamined by the Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*). The Federal Circuit in *Phillips* expressly reaffirmed the principles of claim construction as set forth in *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996), *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576 (Fed. Cir. 1996), and *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 381 F.3d 1111 (Fed. Cir. 2004). Thus, the law of claim construction remains intact. Claim construction is a legal question for the courts. *Markman*, 52 F.3d at 979.

The Court, in accordance with the doctrines of claim construction which it has outlined in the past, construes the claims of the patents-in-suit below. *See Pioneer v.*

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Samsung, Civ. No. 2:07-cv-170, Dkt. No. 94 at 2-8 (E.D. Tex. filed Mar. 10, 2008) (claim construction order).

III. THE PATENTS-IN-SUIT

Originally, the '523 and '686 Patents (hereinafter, collectively "the Patents") were owned by a company named HearMe, which was founded in 1995. '523 Patent at cover; '686 patent at cover; Dkt. No. 82 at 1.[1] HearMe developed and sold technology to permit multiple parties to play video games with each other over the Internet. Dkt. No. 82 at 1. PalTalk purchased the Patents from HearMe in 2002, purportedly because of their relevance to PalTalk's video and voice conferencing business. *Id.* at 2.

The application for the '523 Patent was originally filed with the United States Patent and Trademark Office on February 1, 1996. '523 Patent at cover. On July 18, 1997, HearMe filed a continuation application (Application No. 08/896,797) based upon the application of the '523 Patent (Application No. 08/595,323). '686 Patent at cover. That continuation eventually matured into U.S. Patent No. 6,018,766 (the "'766 Patent"), which is not asserted in this lawsuit. *Id.* On September 28, 1999, HearMe filed a second continuation application (Application No. 09/407,371) based upon the application that matured into the '766 Patent. *Id.* This second continuation matured in to the '686 Patent. *Id.* Since the '686 Patent issued in a line of ordinary continuations from the '523 Patent application, the Patents share the same substantive disclosure.

The Court provides the following summary of the Patents without prejudice to or implication upon the parties' positions: The Patents disclose a system for deploying interactive software applications over a network. '686 Patent at abstract. The system operates in a conventional unicast network using conventional network links and unicast

[1] All page numbers from the parties' submissions are hereinafter cited as originally paginated.

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