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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. Conceptor, 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.*

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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