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

DDR HOLDINGS, LLC,	§ § § § § §	
Plaintiff,		
v.	§ § §	**CIVIL ACTION NO. 2:06-CV-42**
HOTELS.COM, LP, et al.,	§ §	
Defendants.	§ § §	

CLAIM CONSTRUCTION ORDER

Before the Court is Plaintiff's Claim Construction Opening Brief. Dkt. No. 274. Also

before the Court are Defendants' response and Plaintiff's reply. Dkt. Nos. 281 & 292. The

Court held a claim construction hearing on November 17, 2011. *See* 11/17/2011 Minute Entry,

Dkt. No. 308. Having considered the briefing, oral arguments of counsel, and all relevant papers

and pleadings, the Court construes the disputed claim terms as set forth herein.

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I. BACKGROUND

Plaintiff asserts United States Patents No. 6,629,135 ("the '135 Patent"), 6,993,572 ("the '572 Patent"), and 7,818,399 ("the '399 Patent"), which relate to Internet commerce. Dkt. No. 274 at Exs. A-C. The '399 Patent is a continuation of the '572 Patent, and the '572 Patent is a continuation of the '135 Patent. Thus, the patents-in-suit all share a common written description. References to the written description herein shall be to the '135 Patent. Trial is set for October 2012. *See* 9/8/2011 Scheduling Order, Dkt. No. 268.

On December 19, 2006, the Court stayed the above-captioned case pending reexamination of the '135 Patent and the '572 Patent. These patents emerged from reexamination on July 20, 2010. *See* Ex Parte Reexamination Certificates, Dkt. No. 274, Ex. A at 42-44 of 44 & Ex. B at 44-45 of 45. The '399 Patent issued on October 19, 2010. *See* Dkt. No. 274 at Ex. C.

The Abstract of the '135 Patent states:

> The present invention is directed to an e-commerce outsourcing system and method that provides hosts with transparent, context sensitive e-commerce supported pages. The look and feel of a target host is captured for future use. The look and feel is captured by receiving the identification of an example page on the target host, retrieving the page, identifying the look and feel elements of the identified page and storing the identified elements. The host is provided with links correlating the host with a link for inclusion within a page on the host website for serving to a visitor computer, wherein the provided link correlates the host website with a selected commerce object contextually related to material in the page. The commerce object can be a product, a product category or a dynamic selection indicator. Upon activation of the provided link, the visitor computer is served with an e-commerce supported page with the look and feel of the host website associated with the activated link and with content based upon the commerce object associated with the activated link. Where the commerce object is a dynamic selection indicator the content is selected at the time of activation based upon an analysis of the page containing the activated link.

The Abstract of the '572 Patent states:

> An e-commerce outsourcing system and method provides hosts with transparent, context-sensitive e-commerce supported pages. The look and feel of a target host is captured for future use. The host is provided with one or more links for inclusion within a page on the host website that correlates with a selected commerce object, which may be contextually related to material in the page. The commerce object can be a product, a product category, or a dynamic selection indicator. Upon activation of the provided link, a visitor computer is served with a page with the look and feel of the host website and with content based upon the associated commerce object. Where the commerce object is a dynamic selection indicator, the content is selected at the time of activation based upon an analysis of the page containing the activated link.

The Abstract of the '399 Patent states:

> An e-commerce outsourcing system and method provides hosts with transparent, context-sensitive e-commerce supported pages. A plurality of visually perceptible elements associated with and identifying a source of a host's web page are stored in the form of data in a computer database for future use. The host includes one or more links within a page on the host website that correlate with a selected commerce object, which may be contextually related to material in the page. The commerce object can be a buying opportunity for a product of a third-party merchant, a product category containing a plurality of products of third-party merchants, or a dynamic selection indicator of a merchant's product. A plurality of hosts may choose to link to the same commerce object. Upon activation of the link displayed by a particular host website, a visitor computer is served with a page displaying the visually perceptible elements associated with that specific host's website and information associated with the commerce object correlated to the link. Where the commerce object is a dynamic selection indicator, the content is selected at the time of activation based upon an analysis of the page containing the activated link.

Plaintiff asserts: Claim 8 of the '135 Patent; Claims 13, 17, 20, 21, and 23 of the '572 Patent; and Claims 1, 3, 7, and 19 of the '399 Patent. The parties submit four disputed terms for construction: (1) "link"; (2) "capturing"; (3) "look and feel description"; and (4) "third parties."

The asserted claims are reproduced herein with the disputed terms italicized:

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'135 Patent

> 8. An e-commerce outsourcing process providing a host website in communication with a visitor computer with context sensitive, transparent e-commerce support pages, comprising the steps of:
>
>> a) *capturing* a *look and feel description* associated with a host website;
>>
>> b) providing the host website with a *link* for inclusion within a page on the host website for serving to a visitor computer, wherein the provided *link* correlates the host website with a selected commerce object; and
>>
>> c) upon receiving an activation of the provided *link* from the visitor computer, serving to the visitor computer an e-commerce supported page with a look and feel corresponding to the captured *look and feel description* of the host website associated with the provided *link* and with content based on the commerce object associated with the provided *link*.

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> 13. An e-commerce outsourcing system comprising:
>
>> a) a data store including a *look and feel description* associated with a host web page having a *link* correlated with a commerce object; and
>>
>> b) a computer processor coupled to the data store and in communication through the Internet with the host web page and programmed, upon receiving an indication that the *link* has been activated by a visitor computer in Internet communication with the host web page, to serve a composite web page to the visitor computer wit[h] a look and feel based on the *look and feel description* in the data store and with content based on the commerce object associated wit[h] the *link*.
>
> 17. An e-commerce outsourcing process comprising the steps of:
>
>> a) storing a *look and feel description* associated with a first website in a data store associated with a second website;
>>
>> b) including within a web page of the first website, which web page has a look and feel substantially corresponding to the stored *look and feel description*, a *link* correlating the web page with a commerce object; and
>>
>> c) upon receiving an activation of the *link* from a visitor computer to

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