

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

VOIP-PAL.COM, INC.,

Plaintiff,

v.

AMAZON.COM, INC.,
AMAZON.COM SERVICES LLC, and
AMAZON WEB SERVICES, INC.,

Defendants.

CASE NO. 6:20-cv-00272-ADA

**AMAZON’S RESPONSE IN OPPOSITION TO PLAINTIFF VOIP-PAL.COM’S
OPPOSED MOTION FOR ENTRY OF FIRST AMENDED SCHEDULING ORDER**

VoIP-Pal misstates Amazon’s position: VoIP-Pal has elected to prolong the claim construction process in this case. Amazon merely asks the Court to wait to enter a case schedule until VoIP-Pal’s motion for reconsideration of the Court’s *Markman* order is resolved.¹ That will enable the parties to address the case-dispositive nature of that order and determine how to proceed.

In its *Markman* order, the Court adopted Amazon’s proposed construction of the claim term “routing message.” (ECF No. 87 at 2.) That construction requires that the “routing message” have three specific fields, including a time-to-live field. (*Id.*) VoIP-Pal’s infringement contentions make no assertion that any routing messages in the accused system has a time-to-live field. Therefore, following the Court’s claim construction, Amazon repeatedly asked VoIP-Pal to identify *any* basis for asserting that a routing message in the accused Amazon system contains a time-to-live

¹ In emails on March 8 and 14, Amazon told VoIP-Pal that the parties should address the case schedule after the resolution of VoIP-Pal’s motion for reconsideration of the Court’s claim construction order. (ECF No. 90-2; Ex. A.)

field. (ECF 90-2 at 3, 4; Ex. A.)² VoIP-Pal could not identify any such basis. Instead, VoIP-Pal asserted that it needed discovery about Amazon’s message routing system, so Amazon produced over 10,000 pages of documents. (ECF 90-2 at 3; Ex. A.) VoIP-Pal still could not identify any basis for asserting that a routing message in Amazon’s accused system contains a time-to-live field. (ECF 90-2 at 2.)³

Throughout a litigation, a party must possess an adequate basis for its legal and factual contentions. Fed. R. Civ. P. 11(b)(2) and (3). An adverse claim construction does not relieve a party from that obligation. *Taurus IP, LLC v. DaimlerChrysler Corp.*, 726 F.3d 1306, 1328 (Fed. Cir. 2013) (“[A] party cannot assert baseless infringement claims and must continually assess the soundness of pending infringement claims, especially after an adverse claim construction.”). Nor does an adverse claim construction entitle a party to conduct a fishing expedition in hope of finding some basis to support its infringement contentions, which is exactly what VoIP-Pal has indicated it intends to do in this case. (Mot. at 2.)

Waiting to enter a case schedule until after the Court resolves VoIP-Pal’s motion for reconsideration regarding claim construction will facilitate the orderly conduct of the proceedings in this case. First, it will preclude broad, unbounded discovery from VoIP-Pal under an assertion that the Court might reconsider its claim construction. Second, it will present a decision point for

² “Ex. A” refers to Exhibit A of the Declaration of Daniel T. Shvodian, filed concurrently herewith.

³ Rather than identifying any basis for asserting that a routing message in Amazon’s system contains a time-to-live field, VoIP-Pal asked Amazon to prove that it does not infringe (ECF 90-2 at 2, 3), a burden that Amazon does not bear. Amazon, nevertheless, did identify evidence that its system does not have routing messages that contain a time-to-live field. (Ex. A). VoIP-Pal never responded to that March 14 email from Amazon and purposefully excluded that email from the correspondence that VoIP-Pal submitted in support of its motion. (*See* ECF 90-2 (excluding Amazon’s March 14 response).)

VoIP-Pal on whether it should stipulate to noninfringement and appeal the claim construction order or risk proceeding in this case without an adequate basis for asserting that the “routing message” claim limitation is met by the accused system. *Upaid Sys., Ltd. v. Card Concepts, Inc.*, No. 17-C-8150, 2022 WL 4482762, at *2 (N.D. Ill. Sept. 27, 2022) (“So, after the court issued its *Markman* order, [the plaintiff] should have conceded that its infringement claims failed as a matter of law and either ended the litigation or appealed on the ground that the court’s *Markman* ruling was erroneous.”). Third, it will enable Amazon, if necessary, to bring an early dispositive motion for summary judgment of noninfringement, without VoIP-Pal opposing the motion based upon the pending motion for reconsideration.

For those reasons, Amazon requests that the Court deny VoIP-Pal’s motion for an immediate case schedule. Instead, Amazon requests that the Court order the parties to await the Court’s ruling on the motion for reconsideration. After that ruling, the parties can evaluate their positions and, if VoIP-Pal refuses to stipulate to a judgment of noninfringement, the parties can submit a proposed schedule to the Court within two weeks of that ruling.

Dated: March 27, 2023

Respectfully submitted,

/s/ Daniel T. Shvodian

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served March 27, 2023 to all counsel of record, via the Court's CM/ECF system.

/s/ Daniel T. Shvodian

Daniel T. Shvodian