United States District Court,
E.D. Texas, Tyler Division.

ALOFT MEDIA, LLC,
Plaintiff.
v.
ADOBE SYSTEMS INC., and Microsoft Corporation,
Defendants.

Civil Action No. 6:07-cv-355

Sept. 24, 2008.

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ORDER ADOPTING REPORT AND RECOMMENDATION

LEONARD DAVIS**, District Judge.**

The above entitled and numbered civil action has been referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. s. 636. The Memorandum Opinion and Order (Doc. No. 116) containing the Magistrate Judge's claim construction ruling has been presented for consideration. Defendant Microsoft Corporation has filed objections (Doc. Nos.120) to the Memorandum Opinion and Order; however the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct.

All but one of Microsoft's objections consist of the same arguments that were considered by the Magistrate Judge at the *Markman* hearing. Microsoft's one new argument is that the Magistrate Judge committed error by finding "no construction necessary" for some terms. Citing *O2 Micro International Ltd. v. Beyond Innovation Technology Co.,* Microsoft essentially argues that this finding is impermissible when the parties dispute the scope and meaning of claim language. *See* 521 F.3d 1351, 1362 (Fed.Cir.2008). This Court has routinely rejected that argument. *See* Fenner Inv. Ltd. v. Microsoft Corp., No. 6:07-cv-8, 2008 WL 3981838 at (E.D.Tex. Aug. 22, 2008); Alcatel USA Sourcing, Inc. v. Microsoft Corp., No. 6:06-cv-499, 2008 WL 3914889 at *15-16 (E.D.Tex. Aug. 21, 2008); Alcatel USA Res. Inc. v. Microsoft Corp., No. 6:06-cv-500, 2008 WL 2625852 at (E.D. Tex. June 27, 2008); Reedhycalog UK, Ltd. v. Baker Hughes Oilfield Operations Inc., No. 6:06-cv-222, 2008 WL 2152268 at (E.D.Tex. May 21, 2008) ("a court may decline to construe a claim term or rely on that term's ordinary meaning if the court resolves the parties' claim-scope

dispute and precludes the parties from presenting jury arguments inconsistent with the court's adjudication of claim scope"); *see also* Caddy Prod., Inc. v. Am. Seating Co., No. 05-800, 2008 WL 2447294 at (D. Minn. June 13, 2008).

Just one month ago, in *Alcatel USA Sourcing, Inc. v. Microsoft Corp.*, this Court found no construction necessary for several claims even though the parties disputed the meaning of the claims. *See* 2008 WL 3914889 at *8, 10-14, 16. As the Court explained, *O2 Micro* only requires courts to resolve the dispute between parties, it does not require courts to construe claims that have clear meanings. *Id.* at *15-16. Alcatel argued that a particular claim was invalid because it contained an indefinite term. Microsoft countered that the term was not indefinite and that no construction was necessary. This Court found for Microsoft by finding the claim not indefinite and finding that no construction was necessary. *Id.*

With regard to the "content" terms and "wherein" clauses at issue in this case, the Court finds that the Magistrate Judge's opinion resolved the dispute between the parties and that Microsoft's objections are without merit. With regard to the "in a manner" clauses, the Court finds Microsoft's objections to be circular and needlessly complicated. At the *Markman* hearing, the parties proposed competing interpretations of the "in a manner" clauses. According to Microsoft, its interpretation would render them indefinite. Having rejected Microsoft's interpretation, the Magistrate Judge found that the clauses are not indefinite, and that no further construction is necessary. Microsoft now argues that by not construing the clauses, the Magistrate Judge failed to address which interpretation of the clauses is correct. It contends that this Court should find the clauses indefinite, or in the alternative, construe them as Microsoft interpreted them at the *Markman* hearing-an interpretation which would render the clauses indefinite. This argument is without merit. *See* Alcatel, 2008 WL 3914889 at *15-16. By rejecting Microsoft's interpretation of the clauses, the Magistrate Judge found the clauses not indefinite, thus resolving the parties' dispute and foreclosing any need for further construction. *See* O2 Micro International Ltd., 521 F.3d at 1362. The finding also details why Microsoft's proposed construction is inappropriate. The Court agrees with the Magistrate Judge that the clauses are not indefinite and that no further construction is necessary.

Although the claim terms at issue have not been construed, the parties may not interpret the terms in a manner that is inconsistent with the Magistrate Judge's opinion. If Microsoft later discovers that Plaintiff is presenting an inconsistent interpretation of the claims at issue, Microsoft may object at that time. Until then, the Court sees no reason to construe claims that have clear, easily understandable meanings.

Therefore, the Court hereby overrules Defendants objections and adopts the Memorandum Opinion and Order of the United States Magistrate Judge as the Opinion and Order of this Court.

So ORDERED.

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