IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

USA VIDEO TECHNOLOGY   )
CORPORATION,   )
)
            Plaintiff,   )
)
    v.   )   Civil Action No. 03-368-KAJ
)
MOVIELINK LLC,   )
)
            Defendant.   )

MEMORANDUM ORDER

I.   Introduction & Background[1]

        Presently before me is a Motion for Reconsideration (Docket Item ["D.I."] 169;

the "Motion") filed by plaintiff USA Video Technology Corp. ("USVO"). For the following

reasons, the Motion is denied.

        USVO's Motion comes in response to my January 28, 2005 Opinion, in which I

granted summary judgment for defendant Movielink LLC ("Movielink") after finding that

Movielink's Multi-CDN system does not infringe U.S. Patent No. 5,130,792 (the "'792

patent"). (D.I. 168 at 14-29.) More specifically, I found that the Movielink Multi-CDN

system does not practice the "distribution interface initiates connections" limitation of

claim 1 because, even assuming the Movielink system has a distribution interface, it is

the user's computer which "initiates" or begins[2] the claimed connections, not the alleged

_____

        [1] A more detailed description of the technology disclosed in the '792 patent is
discussed in my January 28, 2005 Opinion. (D.I. 168 at 3-6.)

        [2] I previously construed "initiates" as "begins." (D.I. 168 at 11-13.)

"distribution interface" of Movielink's system. (*Id.*) Therefore, I granted Movielink's motions for summary judgment of non-infringement. (*Id.* at 29-30; D.I. 167.)

II.   Standard of Review

Motions for reconsideration should be sparingly granted. The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. *Seawright v. Carroll*, No. 02-1258-KAJ, 2004 WL 396310, at *1 (D. Del. Mar. 2, 2004) (citing *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985)). "A motion for reconsideration is not appropriate to reargue issues that the court has already considered and denied." *Id.* (internal citation omitted). A court may grant a motion for reconsideration "if the moving party shows: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a manifest injustice." *Id.* (citing *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)).

III.   Discussion

In this Motion, USVO contends that the findings in my January 28, 2005 Opinion were based "on two factual errors concerning the evidence of record" and that I decided "an issue outside the adversarial issues presented by the parties." (D.I. 169 at 1.) First, USVO says I erred in saying there was no support for USVO's assertion that a "session" is a "connection."[3] (*Id.*) Second, USVO argues that the expert report submitted by its expert, Dr. Beckmann, and his deposition testimony provide "unequivocal evidence" that the CDS "initiates" the HTTP session. (*Id.*) USVO asserts

---

[3] USVO, however, accepts fault for this factual error because it miscited the deposition testimony on which it was relying. (D.I. 169 at 1.)

2

that it did not earlier present this "unequivocal evidence" because "[t]he timing of the Court's *sua sponte* construction of "initiates" did not permit USVO the opportunity to demonstrate the evidence that shows that the Movielink CDS begins the HTTP Session." (*Id.*) Thus, USVO asserts that because "the parties had not focused [on that claim term, and] ... the Court resolved the case by deciding an issue outside the issues presented by the parties," its Motion should be granted. (*Id.*)

USVO then turns to its arguments in support of its request for reconsideration. First, USVO asserts that both experts agreed that an HTTP session is a "connection," as that term is used in the '792 patent. (*Id.* at 4-5.) Second, USVO argues that consideration of all the evidence should result in a denial of Movielink's summary judgment motions. (*Id.* at 5-11.) Specifically, USVO asserts that the following uncontested evidence supports its argument for reconsideration: (1) the Movielink CDS runs TOMCAT software, (2) TOMCAT has a program called "Interface HttpSession," (3) Dr. Beckmann, "identified the specific portion of CDS source code that includes this program," and (4) the TOMCAT documentation for the Interface HttpSession states: "[t]he servlet container uses this interface to create a session between an HTTP client and an HTTP server." (*Id.* at 8.) Finally, USVO asserts that I applied two different meanings of "initiates," one based on the plain and customary meaning and another based on a more exacting definition concerning an order of the various connections that are formed within the Movielink system. (*Id.* at 12.) Specifically, USVO asserts that if my finding was based on the fact that the allegedly infringing connections were created

3

in response to requests from the user's side, I would be contradicting the language of claim 1 of the '792 patent. (*Id.* at 12-14.)

In response, Movielink argues that USVO's Motion "is merely an attempt to re-argue the [summary judgment] motion[s], including the legal significance of the factual record, while using ... [its] motion as a vehicle to improperly supplement the record." (D.I. 171 at 1.) Specifically, Movielink asserts that "the parties ... vigorously argued ... the construction of the terms that constitute the phrase, ["initiates connections,"] as well as their interrelationship." (*Id.* at 10.) Thus, Movielink argues that I did not decide an issue "outside of those presented by the parties," and therefore, USVO's Motion should be denied. (*Id.* at 12.)

Movielink also addresses each point argued by USVO. First, Movielink asserts that whether a "session" is a "connection" "is irrelevant to the Court's finding of non-infringement." (*Id.* at 18.) Movielink argues that I assumed that a session was a connection in my January 28, 2005 Opinion, yet still concluded that "opening" a session was not necessarily synonymous with initiates a session, or a connection. (*Id.* at 19 (citing D.I. 168 at 23-24).) Second, Movielink argues that I should not consider the "newly submitted 'evidence,'" by USVO because it was "available ... but ... inexplicably not submitted (nor discussed) by USVO as part of its opposition" to Movielink's motions for summary judgment. (*Id.* at 20.) Specifically, Movielink asserts that "[w]here evidence is not newly discovered, a party may not submit that evidence in support of a motion for reconsideration." (*Id.* (quoting *Harsco Corp. v. Lucjan Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985)).) Third, Movielink argues that I applied the plain and ordinary

4

meaning of the term "initiates" in my discussion of the arguments asserted in the summary judgment motions, which was not contrary to either the claim language or the prosecution history of claim 1. (*Id.* at 14-16.)

I reject USVO's contention that the significance of the claim term "initiates connections" was not properly within the scope of the issues presented.[4] The term was thoroughly discussed in the parties' briefs in support of and in opposition to Movielink's motions for summary judgment and was thus properly within the scope of the issues presented. (*See* D.I. 135, 143.) Specifically, Movielink's second argument in support of one of its motions for summary judgment was that "in the Movielink system it is the 'download' button on the consumer's home computer that 'initiates' the download of the requested movie - not any 'distribution interface' residing in Movielink's facilities." (*See* D.I. 135 at 3-4.) Thus, there is no excuse for USVO's failure to present the evidence that it felt was relevant to that issue.

Additionally, USVO has failed to establish any of the three recognized circumstances for granting a motion for reconsideration identified by the Third Circuit in *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). Specifically, USVO has not identified an intervening change in the controlling law, nor argued that the "new" evidence now asserted was unavailable when I issued my January 28, 2005

---

[4] I regret my own choice of words in the January 28, 2005 claim construction and summary judgment Memorandum Opinion, when I said, "[t]he arguments made by both parties ... are focused on the term 'connections,' and not on the term 'initiates.'" (D.I. 168 at 11.) I did not intend to convey that the meaning of "initiates" was not addressed by the parties. It was, at length. I intended to convey that the arguments of the parties dealt with the term as part of a longer phrase but that I found the plain meaning of the term to be highly significant in and of itself.

Opinion, nor asserted that there is a need to correct a manifest injustice. *See Seawright v. Carroll*, No. 02-1258-KAJ, 2004 WL 396310, at *1 (D. Del. Mar. 2, 2004) (internal citation omitted). Thus, under the controlling precedent, USVO has failed to establish that reconsideration is appropriate.

Even assuming, however, that I were to consider USVO's arguments and "new" evidence, its Motion would still be unfounded. Importantly, the applicants for the '792 patent made several arguments to the Patent and Trademark Office regarding the claim limitation at issue.[5] Specifically, the applicants distinguished the Cohn reference, a prior art patent, by arguing that "[t]he Cohen reference describes a system in which *a local unit ... initiates* a download of a video program such as a movie. ... The telephonic connection and request is made by the *local unit* itself... ." (D.I. 139, Ex. H at 7, Amendment (emphasis added).) The applicants argued that, unlike the control exhibited by the local unit in the Cohen reference, the central facility in the invention of the '792 patent is in control and "*initiates a new connection at its convenience* and sends a program to the remote unit identified in the request." (*Id.*, Ex. H at 9, Amendment (emphasis added).) Thus, the applicants specifically disclaimed coverage of a system in which the local unit is in control, initiating the connections over the telephone network. Furthermore, the applicants noted that, in their claimed system, the central facility initiates the new connection "at its convenience," rather than in direct response to a request. (*Id.*)

---

[5] A full discussion of the prosecution history is presented in my January 28, 2005 Opinion. (D.I. 168 at 12-13.)

The Movielink system operates in the same way as the invention disclosed in the Cohen reference, where the local unit "initiates" the connections, rather than the central facility initiating them. The Movielink Manager software on the user's computer "initiates" a TCP connection to the CDR through an HTTP request which is then redirected to the appropriate CDS.[6] It is the HTTP GET request to the CDS which also "initiates" the HTTP connection, or "session."[7] This connection does not occur at the "convenience" of the central facility, but rather is initiated by the Movielink Manager software residing on the user's computer. Thus, USVO's second argument regarding the "new" evidence of the TOMCAT documentation and Dr. Beckmann's testimony does not create a genuine issue of material fact with respect to which part of Movielink's system "initiates connections."

Finally, I did not apply a more exacting definition of the term "initiates," which I previously construed to mean "begins." (D.I. 168 at 11-13.) In finding that the user's computer "initiates" the TCP connection, I noted that "the HTTP Redirect message is actually a response from the CDR to the request initiated by [Movielink Manager] on the user's computer." (D.I. 168 at 23.) The mere fact that the HTTP Redirect is a "response," was not the basis for my conclusion. Rather, the point I tried to emphasize was that the resulting HTTP GET request begins or is "initiated" by the user's computer and is sent from the user's computer to the central facility, which then responds to the

---

[6] A detailed discussion of the operation of the Movielink system is described in the January 28, 2005 Opinion. (D.I. 168 at 19-20.)

[7] Thus, even assuming that a "session" is a "connection" within the meaning of the term as used in the '792 patent, the conclusion remains the same, that the session is "initiated" by the user's computer, not the central facility as required by claim 1.

7

request by transmitting an HTTP response, which can include a digital movie. (*See id.* at 20, 23.) Thus, the distribution interface in Movielink's system, assuming it indeed has one, does not "initiate" these connections over the telephone network, rather the connections are initiated by the user's computer.[8]

IV.   Conclusion

Accordingly, for the reasons stated, IT IS HEREBY ORDERED that USVO's Motion for Reconsideration (D.I. 169) is DENIED.

UNITED STATES DISTRICT JUDGE

May 27, 2005
Wilmington, Delaware

---

[8] USVO also suggests that, based on my reasoning in the January 28, 2005 Opinion, "even a direct implementation of the preferred embodiment of the '792 patent would not be covered by the claims of the '792 patent because the initial request for the movie always originates from the customer side ... and all aspects of the mechanical and electrical actions that follow are thus taken ... 'in response' to the user's initial request." (D.I. 169 at 14.) That is not the case. As discussed, the applicants specifically distinguished the '792 patent and claim 1 from the Cohen reference based on the "control" exhibited by the central facility, because it could respond to the movie request at its own convenience. (D.I. 139, Ex. H at 7, 9, Amendment.) In the preferred embodiment, it is the central facility which "initiates" the "connections" to transfer the video requested. Thus, whether a connection was formed "in response to the user's *initial* request," as discussed above, was not the sole basis for my conclusion. Rather, the claim language and prosecution history compels this result.

8