

United States District Court,
E.D. Pennsylvania.

CROSS ATLANTIC CAPITAL PARTNERS, INC,
v.
FACEBOOK, INC. and LLC.

April 3, 2008.

Frederick A. Tecce, McShea Tecce, PC, Patrick J. Keenan, Thomas J. Duffy, Duffy & Partners, Philadelphia, PA, for Cross Atlantic Capital Partners, Inc.

Alfred W. Zaher, Joel L. Dion, Blank Rome, LLP, Dennis P. McCooe, Blank, Rome Comisky & McCauley, LLP, Philadelphia, PA, Craig W. Clark, Heidi L. Keefe, Mark R. Weinstein, Sam C. O'Rourke, White & Case, LLP, Palo Alto, CA, for Facebook, Inc. and Thefacebook, LLC.

ORDER

JOHN R. PADOVA, District Judge.

AND NOW, this 3rd day of April, 2008, in consideration of the parties' responses to the Court's Order dated March 17, 2008, to show cause why we should not amend our claims construction Order by deleting the words "sending out" from the construction of the term "transmit," to make said construction consistent with the Court's stated rationale, **IT IS HEREBY ORDERED** that the construction of "transmit" contained in Paragraph 1(g) of the Court's claims construction Memorandum and Order dated February 29, 2008, is amended to read: "electronically connecting and/or communicating by any wireless or wire mechanism."

FN1

FN1. The construction of "transmitting" originally proposed by Plaintiff was "Electronically connecting, sending out and/or communicating by any wireless or wire mechanism." (Pl. Claims Construction Br. at 25.) The construction proposed by Defendants was "Electronically sending." (Def. Br. at 23.) In our discussion of the issue, we determined that numerous parts of the specification of the patent in suit demonstrated that the patent disclosed a method for two-way communication by "interacting through a network" and allowing "widespread and rapid distribution of an electronic connection" between users. Memorandum and Order of February 29, 2008, at 13-14 (citing '629 Patent Col. 3, lines 16-19, 24-29). We also determined that limiting "transmitting"-as suggested by the Defendants-to just "sending" would make certain functions described in the patent in suit impossible. *Id.* at 14. However, in the Order attached to our Memorandum, we incorrectly included the "sending" element as a possible alternative construction of "transmitting" by including the disjunctive subclause "or sending" in our construction. See Order of February 29, 2008, at Paragraph 1(g). Accordingly, we invited the parties to show cause why the Order should not be amended to strike the subclause.

Plaintiff has responded to the show cause Order indicating it has no objection to the Court's proposed

amendment. Defendants' response asks that we not alter our original order or, in the alternative, amend Paragraph 1(g) to instead read "Electronically connecting, sending out **and** communicating by any wireless or wire mechanism." We find that substituting the conjunctive **and**-thereby requiring all three actions-for the disjunctive **or** would be a dramatic departure from the rationale expressed in our original Memorandum and would not comport with the patent specifications that we reviewed.

E.D.Pa.,2008.

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