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

PERSONALWEB TECHNOLOGIES, LLC Plaintiff, vs. AMAZON.COM, INC.; AMAZON WEB SERVICES LLC; AND DROPBOX, INC. Defendants.	§ § § § § § § § §	CASE NO. 6:11-CV-658

PERSONALWEB TECHNOLOGIES, LLC Plaintiff, vs. AUTONOMY, INC., ET AL., Defendants.	§ § § § § § § § §	CASE NO. 6:11-CV-683

PERSONALWEB TECHNOLOGIES, LLC Plaintiff, vs. YAHOO! INC. Defendant.	§ § § § § § § § §	CASE NO. 6:12-CV-658

PERSONALWEB TECHNOLOGIES, LLC	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	**CASE NO. 6:12-CV-663**
MICROSOFT CORP.	§	
	§	
Defendant.	§	

ORDER

Before the Court are Plaintiff PersonalWeb Technologies, LLC's ("PersonalWeb") Motions for Partial Reconsideration of the *Markman* Order (6:11-cv-658, Docket No. 142; 6:11-cv-683, Docket No. 187; 6:12-cv-658, Docket No. 75; 6:11-cv-663, Docket No. 89).[1] Having considered the parties' written submissions, the Court **DENIES** the Motions.

BACKGROUND

PersonalWeb filed several lawsuits alleging infringement of nine patents[2] that claim priority to a common patent application. The patents generally relate to methods for identifying data items in a data processing system. Data items may be the contents of a file, a page in memory, a digital message, or any other entity that can be represented by a sequence of bits. '310 Patent at 2:17–21.

The Court heard oral argument regarding claim construction on July 18, 2013 and issued a claim construction order on August 5, 2013. The order construes two groups of "identifiers" that are relevant to these Motions. The first group includes the terms "substantially unique identifier," "True Name," and "data identifier." The parties agreed these terms should share a

[1] The parties' briefing and the Court's relevant claim construction are identical in each case. Therefore, the Court considers the Motions together. Unless otherwise noted, docket citations refer to Case No. 6:11-cv-658.

[2] U.S. Patent Nos. 5,978,791 ("the '791 Patent); 6,415,280 ("the '280 Patent); 6,928,442 ("the '442 Patent); 7,802,310 ("the '310 Patent); 7,945,539 ("the '539 Patent); 7,945,544 ("the '544 Patent); 7,949,662 ("the '662 Patent); 8,001,096 ("the '096 Patent); and 8,099,420 ("the '420 Patent).

common construction. Docket No. 140 at 13 n.3. They also agreed that these identifiers are generated by processing "only the data in the data item." *Id.* at 13.

The second group of identifiers is at issue in these Motions. This group includes the terms "digital identifier" and "data item identifier." Unlike the first group, the parties disputed whether these identifiers can be generated by processing more than "only the data in the data item." The Court held that these terms should have the same construction as the first group of identifiers. *Id.* at 22–23. It therefore construed "digital identifier" and "data item identifier" as "an identity for a data item generated by processing all of the data in the data item, and *only the data in the data item*, through an algorithm that makes the identifier substantially unique." *Id.* at 47 (emphasis added).

APPLICABLE LAW

The Federal Rules of Civil Procedure do not expressly recognize motions for reconsideration. *St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123 F.3d 336, 339 (5th Cir. 1997). However, the Court has authority to consider such motions using the guidelines of Rule 59(e), which governs motions to alter or amend judgments. *Hamilton v. Williams*, 147 F.3d 367, 379 n.10 (5th Cir. 1998); FED R. CIV. P. 59(e). For Rule 59(e) to be applicable, the movant must demonstrate either that: (1) there has been an intervening change in controlling law; (2) that there is new evidence available that was not previously available; or (3) there is a need to correct a clear error of law or to prevent a manifest injustice. *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002). "[S]uch a motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Templet v. Hydrochem, Inc.*, 367 F.3d 473, 479 (5th Cir. 2004).

ANALYSIS

PersonalWeb requests the Court to reconsider its construction of "digital identifier" and "data item identifier." Docket No. 142 at 1. Specifically, it asks the Court to remove the limitation that these claimed identifiers are generated by processing "only the data in the data item." *Id.* It argues that such relief is necessary to correct a clear error of law because the Court's construction deviates from the claim language, the specification describes embodiments consistent with PersonalWeb's proposed modification, and the patentee did not disclaim that proposed modification. *Id.* at 2–3.

PersonalWeb asserts that the Court's construction deviates from the language of claim 86 of the '310 Patent and claim 81 of the '096 Patent. *Id.* at 4–5; Docket No. 146 at 2–3. Claim 86 states that "the digital identifier [is] based, *at least in part*, on a given function of at least some of the bits in the particular sequence of bits." '310 Patent, claim 86, at 46:28–30 (emphasis added); *see* Docket No. 142 at 4; Docket No. 146 at 2. Claim 81 also recites that "said first data item identifier [is] based *at least in part* on the data comprising the first data item." '096 Patent, claim 81, at 44:60–61 (emphasis added); *see* Docket No. 142 at 4; Docket No. 146 at 3. Therefore, PersonalWeb concludes, the patent claims "digital identifiers" and "data item identifiers" that are generated by processing more than "only the data in the data item." Docket No. 142 at 5.

However, PersonalWeb previously raised this argument in its opening claim construction brief and the Court did not adopt it. Docket No. 124 at 8, 10; Docket No. 140 at 21. In the claim construction opinion, the Court noted that "[o]ther claims use similar 'at least' language with regard to 'data [ ] identifier' and 'True Name.'" Docket No. 140 at 21. Both of those terms were found to "have the same meaning as 'substantially unique identifier,'" which PersonalWeb concedes is generated by processing "only the data in the data item." *Id.* at 13, 21. Therefore,

the Court determined that "PersonalWeb's arguments regarding the 'at least' language [were] not persuasive." *Id.* at 21.

Next, PersonalWeb emphasizes that the specification describes embodiments in which "digital identifiers" and "data item identifiers" are generated by processing more than "only the data in the data item." Docket No. 142 at 5. It quotes the '791 Patent specification for support:

> While the invention is described herein using only the True Name of a data item as the identifier for the data item, other preferred embodiments use tagged, typed, categorized or classified data items and use a combination of both the True Name and the tag, type, category or class of the data item as an identifier. . . . [T]he tags provide an additional level of uniqueness.

Id. (quoting '791 Patent at 13:55–67) (internal quotations omitted). Therefore, PersonalWeb concludes, the invention contemplates identifiers generated using data that is not part of the data item. *Id.*

However, PersonalWeb previously raised this argument in its reply claim construction brief and the Court did not adopt it. Docket No. 132 at 2; Docket No. 140 at 21–22. Even if the specifications disclose identifiers that are generated by processing more than "only the data in the data item," this does not mean that the patentee used the terms "data item identifier" or "digital identifier" to describe those identifiers. Quite the opposite, there is evidence from the specification showing that "data item identifier" and "digital identifier" should be given the same construction as "substantially unique identifier," which PersonalWeb concedes is generated by processing "only the data in the data item." Docket No. 140 at 13, 21–22.

Finally, PersonalWeb contends the patentee did not disclaim "digital identifiers" and "data item identifiers" that are generated by processing more than "only the data in the data item." Docket No. 142 at 6–7. It quotes the '791 Patent specification for support: "'In the following, the terms 'True Name', 'data identity' and 'data identifier' refer to the substantially

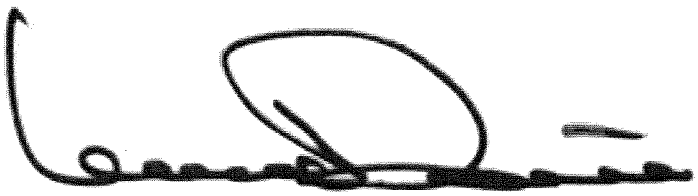
unique data identifier for a particular data item.'" *Id.* at 6 (quoting '791 Patent at 6:6–8). According to PersonalWeb, the absence of the disputed terms from that list reflects a conscious choice not to correlate them with "substantially unique identifiers," which are generated by processing "only the data in the data item." *Id.*; Docket No. 140 at 13.

However, PersonalWeb previously raised this argument in its reply claim construction brief and the Court did not adopt it. Docket No. 132 at 3; Docket No. 140 at 21–22. PersonalWeb concedes that the terms "digital identifier" and "data item identifier" are not used in the specification at all. Docket No. 146 at 4. Therefore, their absence from the list of terms that correlate with "substantially unique identifier" is of little value. It does not preclude a construction consistent with the listed terms, in light of evidence from the specification showing that "data item identifier" and "digital identifier" should be given the same construction as "substantially unique identifier." Docket No. 140 at 21–22.

CONCLUSION

PersonalWeb's Motions for Partial Reconsideration of the *Markman* Order merely rehash previously rejected arguments. *See Templet*, 367 F.3d at 479 (holding a motion for reconsideration "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment"). Accordingly, the Motions (6:11-cv-658, Docket No. 142; 6:11-cv-683, Docket No. 187; 6:12-cv-658, Docket No. 75; 6:11-cv-663, Docket No. 89) are **DENIED**.

So ORDERED and SIGNED this 21st day of March, 2014.



LEONARD DAVIS
UNITED STATES DISTRICT JUDGE