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April 29, 2020

The Honorable Richard G. Andrews
United States District Court
J. Caleb Boggs Federal Building
Wilmington, DE 19801-3555

VIA ELECTRONIC FILING

Re: *IPA Techs. Inc., v. Amazon.com, Inc., and Amazon Digital Service, LLC*[1]
C.A. No. 16-1266-RGA

Dear Judge Andrews:

The claim construction hearing in this case is scheduled for May 14, 2020. (D.I. 61.) In view of this Court's April 17, 2020 Revised Standing Order and the shelter-in-place restrictions imposed by many states, both parties anticipate that if the hearing goes forward on May 14, it will need to be held telephonically. The parties have conferred and disagree on whether a telephonic hearing will provide an efficient resolution of the claim construction disputes in this case. Accordingly, the parties write today to seek the Court's guidance regarding the hearing. Each party's view on this issue is reflected below. Should the Court wish to discuss, counsel are available at the Court's convenience.

Plaintiff's Position

IPA respectfully requests the Court maintain the May 14 claim construction hearing date and instruct the parties to participate telephonically (and, if the Court would find it useful, using screen-sharing technology such as Zoom, Webex, or a similar platform). Going forward as planned on May 14 will allow the parties to proceed through the remainder of discovery efficiently, and

[1] On January 1, 2020, Amazon Digital Services, LLC merged into Amazon.com Services LLC.

offers an opportunity for a *Markman* ruling that will inform the remainder of fact and expert discovery. Moreover, due to the current uncertainty posed by the COVID-19 pandemic and no clear indication of when business and the courts will fully resume, Amazon's proposal would effectively postpone the hearing indefinitely. Such a postponement would cause IPA undue prejudice in reaching resolution of its case against Amazon.

To the extent the Court would benefit from technology tutorials from the parties (or less-formal explanations of the technology), IPA is prepared to provide slide decks or other presentation materials in advance of the hearing and to walk through its tutorial/explanation with the Court during the phone hearing. In addition, the Court is already familiar with the technology at issue, given its detailed consideration and ruling on Defendants' motions to dismiss briefed and argued in 2017.

This case has been pending since 2016. IPA does not want to introduce unnecessary delay into the case when that delay may necessitate a request for an extension of discovery deadlines, and possibly the trial date. IPA believes the Court can hear and consider the parties' claim construction positions on the designated date remotely without prejudicing either party or inconveniencing the Court, especially since neither party intends to present any live witnesses.

In the alternative, if the Court is not inclined to conduct the *Markman* hearing by teleconference, IPA proposes that the Court rule on the parties' briefing, which is comprehensive as to the parties' positions. If the Court elects to proceed in this manner, again, IPA is prepared to submit a tutorial or to be available to answer any questions the Court may have either in written form or through telephonic conference without a traditional *Markman* hearing.

Defendants' Position

Amazon respectfully requests that the Court reschedule the May 14 *Markman* hearing—a key event in a patent case—to a later date so that there is a possibility the parties can attend in person. Amazon is concerned that proceeding with the hearing telephonically—or IPA's unprecedented alternative of no hearing at all—will significantly impede Amazon's efforts to explain the complex technology associated with the asserted patents (a distributed software agent architecture with defined structure and content of inter-agent communications) to the Court.[2] A telephonic format will not be conducive to using detailed animated demonstratives necessary to convey the concepts underlying the disputed claim terms. And IPA's alternative of no hearing will rob Amazon from an opportunity to explain to the Court the technological concepts underlying the disputed terms in its entirety.

While IPA argues that it will be prejudiced by the rescheduling of the hearing, it does not identify that prejudice. Nor is there one. The asserted patents expired on January 5, 2019. And there is ample time in the current schedule to accommodate a rescheduled *Markman* hearing: fact discovery does not close until October 2, 2020 and trial is set to begin over a year later on September 27, 2021. Should the timing of a rescheduled *Markman* hearing require it, Amazon is willing to work in good faith with IPA to extend the discovery cut-off date as reasonably necessary to accommodate an in-person *Markman* hearing.

Respectfully,

/s/ *Andrew C. Mayo*

Andrew C. Mayo (#5207)

ACM/nlm
cc: Counsel of Record (via electronic mail)

[2] IPA's reference to the 2017 motion to dismiss briefing is misplaced. This briefing from over two years ago identified the unpatentable features of the asserted patents, not the disputed claim issues that will be the subject of this *Markman* hearing.