

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GEOTAG, INC.,

v.

**FRONTIER COMMUNICATIONS CORP.,
et al.,**

2:10-cv-265

GEOTAG, INC.,

v.

YELLOWPAGES.com LLC

2:10-cv-272

GEOTAG, INC.,

v.

GEORGIO ARMANI S.P.A., *et al.*,

2:10-cv-569

GEOTAG, INC.,

v.

AROMATIQUE, INC., *et al.*,

2:10-cv-570

GEOTAG, INC.,

v.

GUCCI AMERICA, INC., *et al.*,

2:10-cv-571

GEOTAG, INC.,

v.

STARBUCKS CORP., *et al.*,

2:10-cv-572

GEOTAG, INC.,

v.

RENT-A-CENTER, INC., *et al.*,

2:10-cv-573

GEOTAG, INC.,

v.

THE WESTERN UNION COMPANY, *et al.*,

2:10-cv-574

GEOTAG, INC.,

v.

ROYAL PURPLE, INC., *et al.*,

2:10-cv-575

GEOTAG, INC.,

v.

YAKIRA, L.L.C., *et al.*,

2:10-cv-587

GEOTAG, INC.,

v.

WHERE 2 GET IT, INC., *et al.*,

2:11-cv-175

GEOTAG, INC.,

v.

ZOOSK, INC.

2:11-cv-403

GEOTAG, INC.,

v.

**EYE CARE CENTERS OF AMERICA, INC.,
et al.,**

2:11-cv-404

GEOTAG, INC.,

v.

CIRCLE K STORES, INC., *et al.*,

2:11-cv-405

GEOTAG, INC.,

v.

AMERCO, *et al.*,

2:11-cv-421

GEOTAG, INC.,

v.

7-ELEVEN, INC., *et al.*,

2:11-cv-424

GEOTAG, INC.,

v.

SUNBELT RENTALS, INC.

2:11-cv-425

GEOTAG, INC.,

v.

CLASSIFIED VENTURES, LLC

2:11-cv-426

WHERE 2 GET IT, INC.,

v.

GEOTAG, INC.

2:12-cv-149

GEOTAG, INC.,

v.

AMERICAN APPAREL INC.

2:12-cv-436

GEOTAG, INC.,

v.

ABERCROMBIE & FITCH CO.

2:12-cv-437

GEOTAG, INC.,

v.

AMERICAN EAGLE OUTFITTERS INC.

2:12-cv-438

GEOTAG, INC.,

v.

ANN INC.

2:12-cv-439

GEOTAG, INC.,

v.

NEW ASHLEY STEWART, INC.

2:12-cv-440

GEOTAG, INC.,

v.

BURLEIGH POINT, LTD.

2:12-cv-441

GEOTAG, INC.,

v.

CATALOGUE VENTURES, INC.

2:12-cv-442

GEOTAG, INC.,

v.

BURBERRY LIMITED

2:12-cv-443

GEOTAG, INC.,

v.

**BURLINGTON FACTORY WAREHOUSE
CORPORATION**

2:12-cv-444

GEOTAG, INC.,

v.

CACHE INC.

2:12-cv-445

GEOTAG, INC.,

v.

THE WILLIAM CARTER COMPANY

2:11-cv-446

GEOTAG, INC.,

v.

CHARMING SHOPPES INC.

2:12-cv-447

GEOTAG, INC.,

v.

CHICO'S FAS INC.

2:12-cv-448

GEOTAG, INC.,

v.

CITI TRENDS INC.

2:12-cv-449

GEOTAG, INC.,

v.

CLAIRE'S BOUTIQUES, INC.

2:12-cv-450

GEOTAG, INC.,

v.

COLDWATER CREEK INC.

2:12-cv-451

GEOTAG, INC.,

v.

DAVID'S BRIDAL INC.

2:12-cv-452

GEOTAG, INC.,

v.

DEB SHOPS INC.

2:12-cv-453

GEOTAG, INC.,

v.

DELIAS INC.

2:11-cv-454

GEOTAG, INC.,

v.

DESTINATION MATERNITY CORPORATION

2:12-cv-455

GEOTAG, INC.,

v.

DIESEL U.S.A. INC.

2:12-cv-456

GEOTAG, INC.,

v.

DONNA KARAN INTERNATIONAL INC.

2:12-cv-457

GEOTAG, INC.,

v.

**LVMH MOET HENNESSY LOUIS VUITTON
INC.**

2:12-cv-458

GEOTAG, INC.,

v.

DOTS, LLC

2:12-cv-459

GEOTAG, INC.,

v.

DRAPER'S & DAMON'S INC.

2:12-cv-460

GEOTAG, INC.,

v.

EDDIE BAUER LLC

2:12-cv-461

GEOTAG, INC.,

v.

ESPRIT US RETAIL LIMITED

2:12-cv-462

GEOTAG, INC.,

v.

FACTORY CONNECTION LLC

2:11-cv-463

GEOTAG, INC.,

v.

THE FINISH LINE INC.

2:11-cv-464

GEOTAG, INC.,

v.

FOREVER 21 RETAIL INC.

2:12-cv-465

GEOTAG, INC.,

v.

FORMAL SPECIALISTS LTD.

2:12-cv-466

GEOTAG, INC.,

v.

**FREDERICK'S OF HOLLYWOOD STORES
INC.**

2:12-cv-467

GEOTAG, INC.,

v.

GROUPE DYNAMITE, INC. D/B/A GARAGE

2:12-cv-468

GEOTAG, INC.,

v.

GUESS? RETAIL INC.

2:12-cv-469

GEOTAG, INC.,

v.

H&M HENNES & MAURITZ LP

2:12-cv-470

GEOTAG, INC.,

v.

HANESBRANDS INC.

2:12-cv-471

GEOTAG, INC.,

v.

HOT TOPIC INC.

2:12-cv-472

GEOTAG, INC.,

v.

HUGO BOSS FASHION INC.

2:12-cv-473

GEOTAG, INC.,

v.

J. CREW GROUP INC.

2:12-cv-474

GEOTAG, INC.,

v.

JIMMY JAZZ INC.

2:12-cv-475

GEOTAG, INC.,

v.

JOS. A. BANK CLOTHIERS INC.

2:12-cv-476

GEOTAG, INC.,

v.

ALCO STORES INC.

2:12-cv-477

GEOTAG, INC.,

v.

FRED'S INC.

2:12-cv-478

GEOTAG, INC.,

v.

BAKERS FOOTWEAR GROUP

2:12-cv-479

GEOTAG, INC.,

v.

BROWN SHOE COMPANY INC.

2:11-cv-480

GEOTAG, INC.,

v.

COLLECTIVE BRANDS INC.

2:12-cv-481

GEOTAG, INC.,

v.

CROCS INC.

2:12-cv-482

GEOTAG, INC.,

v.

DSW INC. D/B/A DSW SHOE INC.

2:12-cv-483

GEOTAG, INC.,

v.

FLEET FEET INC.

2:12-cv-484

GEOTAG, INC.,

v.

FOOT SOLUTIONS INC.

2:12-cv-485

GEOTAG, INC.,

v.

GENESCO INC.

2:12-cv-486

GEOTAG, INC.,

v.

HEELY'S INC.

2:12-cv-487

GEOTAG, INC.,

v.

JUSTIN BOOT COMPANY

2:12-cv-488

GEOTAG, INC.,

v.

AMERICAN GREETINGS CORPORATION

2:12-cv-520

GEOTAG, INC.,

v.

HALLMARK CARDS, INC.

2:12-cv-521

GEOTAG, INC.,

v.

HICKORY FARMS INC.

2:12-cv-522

GEOTAG, INC.,

v.

SPENCER GIFTS LLC

2:12-cv-523

GEOTAG, INC.,

v.

INTERNATIONAL COFFEE & TEA, LLC

2:11-cv-524

GEOTAG, INC.,

v.

THINGS REMEMBERED, INC.

2:11-cv-525

GEOTAG, INC.,

v.

THE YANKEE CANDLE COMPANY, INC.

2:12-cv-526

GEOTAG, INC.,

v.

BOSE CORPORATION

2:12-cv-527

GEOTAG, INC.,

v.

GUITAR CENTER INC.

2:12-cv-528

GEOTAG, INC.,

v.

PROGRESSIVE CONCEPTS INC.

2:12-cv-529

GEOTAG, INC.,

v.

24 HOUR FITNESS WORLDWIDE INC.

2:12-cv-530

GEOTAG, INC.,

v.

BALLY TOTAL FITNESS CORPORATION

2:12-cv-531

GEOTAG, INC.,

v.

BARE ESSENTIALS INC.

2:12-cv-532

GEOTAG, INC.,

v.

BIOSCRIP INC.

2:12-cv-533

GEOTAG, INC.,

v.

CRABTREE & EVELYN

2:12-cv-534

GEOTAG, INC.,

v.

CURVES INTERNATIONAL INC.

2:12-cv-535

GEOTAG, INC.,

v.

GOLD'S GYM INTERNATIONAL INC.

2:12-cv-536

GEOTAG, INC.,

v.

GREAT CLIPS INC.

2:12-cv-537

GEOTAG, INC.,

v.

L.A. FITNESS INTERNATIONAL INC.

2:12-cv-538

GEOTAG, INC.,

v.

LIFE TIME FITNESS INC.

2:12-cv-539

GEOTAG, INC.,

v.

M.A.C. COSMETICS INC.

2:12-cv-540

GEOTAG, INC.,

v.

MERLE NORMAN COSMETICS

2:11-cv-541

GEOTAG, INC.,

v.

**VITAMIN COTTAGE NATURAL FOOD
MARKETS, INC.**

2:12-cv-542

GEOTAG, INC.,

v.

REGIS CORPORATION

2:12-cv-543

GEOTAG, INC.,

v.

SALLY BEAUTY SUPPLY LLC

2:12-cv-544

GEOTAG, INC.,

v.

SEPHORA USA INC.

2:12-cv-545

GEOTAG, INC.,

v.

TONI&GUY USA, LLC

2:12-cv-546

GEOTAG, INC.,

v.

**ULTA SALON, COSMETICS & FRAGRANCE,
INC.**

2:12-cv-547

GEOTAG, INC.,

v.

VITAMIN SHOPPE INDUSTRIES, INC.

2:12-cv-548

GEOTAG, INC.,

v.

EYEMART EXPRESS, LTD.

2:12-cv-549

GEOTAG, INC.,

v.

LUXOTTICA RETAIL NORTH AMERICA INC.

2:12-cv-550

GEOTAG, INC.,

v.

NATIONAL VISION INC.

2:12-cv-551

GEOTAG, INC.,

v.

U.S. VISION INC.

2:12-cv-552

GEOTAG, INC.,

v.

WILD BIRDS UNLIMITED INC.

2:12-cv-553

GEOTAG, INC.,

v.

JOS. A. BANK CLOTHIERS INC.

2:12-cv-554

GEOTAG, INC.,

v.

BUTH-NA-BODHAIGE INC.

2:12-cv-555

GEOTAG, INC.,

v.

PSP GROUP, LLC

2:12-cv-556

GEOTAG, INC.,

v.

RITZ INTERACTIVE LLC

2:12-cv-557

**MOTION TO STRIKE INSUFFICIENT INFRINGEMENT CONTENTIONS, OR
IN THE ALTERNATIVE, COMPEL MEANINGFUL INFRINGEMENT
CONTENTIONS THAT COMPLY WITH P.R. 3-1**

Defendants Doctor's Associates Inc. d/b/a Subway ("Subway"), ASICS America Corp. ("ASICS"), Brown Jordan International Inc. ("Brown Jordan"), Caterpillar Inc. ("Caterpillar"), and People Media Inc. ("People Media") (collectively, "Exemplar Defendants")¹ respectfully move the Court for an Order striking Plaintiff GeoTag Inc.'s ("GeoTag") June 27, 2012 Disclosure of Asserted Claims and Infringement Contentions ("Infringement Contentions") for failure to comply with Local Patent Rule ("P.R.") 3-1, or in the alternative, for an Order compelling GeoTag to amend its Infringement Contentions to comply with P.R. 3-1 and provide adequate notice of its infringement theories.

I. INTRODUCTION

GeoTag has alleged infringement of U.S. Patent No. 5,930,474 by over 400 Defendants based on "locator technology" on those defendants' websites. However, rather than providing Defendants with detailed infringement contentions that comply with P.R. 3-1, GeoTag served each Defendant with substantially similar, generic infringement contentions that repeatedly ignore claim limitations or address them with only a conclusory recitation of the claim language itself. For example, while GeoTag alleges that Defendants provide a search engine configured to

¹ Although only five of the over four hundred defendants in these cases are raised here as Exemplar Defendants, the contentions served on the remaining defendants are deficient for the same or similar reasons described herein. Over 334 defendants joined in a letter pointing out specific deficiencies in GeoTag's Infringement Contentions. Counsel for GeoTag purported to refuse to acknowledge that a proper meet and confer occurred except as to those defendants identified as exemplars in Defendants' letter outlining the various deficiencies in GeoTag's contentions—even though the deficiencies for each of the Defendants are generally the same. (See July 25, 2012 Letter from M. Bittner to E. Buether (attached as Exhibit A))—but Andrew Spangler, GeoTag's Local Counsel, agreed in the same call that GeoTag would update its infringement contentions with respect to all similarly-situated Defendants if GeoTag lost this issue. Based on Mr. Spangler's agreement, the remaining Defendants thus join and file this Motion in their respective cases and request relief as to GeoTag's individual infringement contentions against them.

search topics, GeoTag identifies purported topics that are *not searched, or even searchable*, by the accused website (*e.g.*, store telephone numbers, store hours, *etc.*) as its support. In addition, claim limitations requiring “dynamic replication” of an entry were critical to overcoming prior art of record during prosecution, but GeoTag’s Infringement Contentions make no attempt to explain how the accused websites allegedly perform “dynamic replication” and instead, simply parrot the claim language. These and other deficiencies have forced Defendants to prepare their defense without a basic understanding of GeoTag’s infringement theory for numerous claim limitations. Because GeoTag has refused to correct these deficiencies without Court intervention, Defendants request that this Court either strike GeoTag’s Infringement Contentions or order GeoTag to comply with the Local Patent Rules and provide meaningful contentions before Defendants are further prejudiced by having to defend against vague and indeterminable allegations.

II. BACKGROUND

To date, Plaintiff GeoTag has filed eighteen different lawsuits in this District directed at “locator technology” (for example, the “Find a Store” feature at <http://www.subway.com/storelocator/default.aspx>). Among these lawsuits are two cases filed in July 2010 (the “July 2010 Locator Actions”), nine cases filed between December 2010 and March 2011 (the “December 2010 Locator Actions”) and seven cases filed in September 2011 (“the September 2011 Locator Actions”). Two of the September 2011 Locator Actions, Case Nos. 2:11-cv-404 and 2:11-cv-405, were severed into several individual cases due to GeoTag’s improper multi-defendant filing after the effective date of certain joinder provisions of the America Invents Act. All told, GeoTag has sued nearly five hundred entities over their alleged

infringement of U.S. Patent No. 5,930,474 (“the ’474 Patent”) by providing various locator services on their commercial websites.

GeoTag served its first Disclosure of Asserted Claims and Infringement Contentions on defendants in the December 2010 Locator Actions on November 21, 2011. These contentions were not only substantially similar as to each Defendant—save individualized screenshots from the accused websites—but also were facially insufficient under P.R. 3-1 for the same reasons described herein. On December 8, 2011, in an effort to understand GeoTag’s infringement theories and adequately prepare their defense, Defendants sent letters to counsel for GeoTag outlining the various deficiencies and requesting amended contentions. (*See* December 8, 2011 Letter from M. Bittner to E. Buether (attached as Exhibit B)). Because the same deficiencies applied to almost every Defendant, Defendants identified common issues using exemplar claim charts rather than repeatedly describing the same deficiencies for every single Defendant. (*See id.*). GeoTag never addressed these deficiencies.

On February 23, 2012, before this dispute could be resolved the cases were re-assigned to Judge Schneider who subsequently placed the July 2010 Locator Actions, the December 2010 Locator Actions, and the September 2011 Locator Actions on a single schedule. Pursuant to the new schedule, GeoTag served the Infringement Contentions at issue in this Motion on all Defendants on June 27, 2012. GeoTag’s June 2012 Infringement Contentions to the Defendants in the December 2010 Locator Actions were identical to GeoTag’s November 21, 2011 contentions in all aspects relevant to this Motion. The Infringement Contentions served to Defendants in the September 2011 Locator Action were also substantially similar to the original Infringement Contentions, except for an insignificant number of individualized screenshots of the accused websites.

Because the same deficiencies identified by Defendants in response to GeoTag's November 21, 2011 contentions were still present in the June 27, 2012 contentions, Defendants again raised these deficiencies with GeoTag by letter on July 25, 2012. (*See* Exhibit A (July 25, 2012 Letter)). Once again, Defendants described these deficiencies using exemplars rather than describing them in detail for each and every one of the over 400 named entities. (*See id.*) After numerous unexcused delays by GeoTag, including multiple substitutions of plaintiff's counsel, the parties finally met and conferred on the issues raised in these letters on October 12, 2012. However, despite the presence of dozens of attorneys on the call, GeoTag inexplicably denied that a proper meet and confer occurred except as to the four defendants used as exemplars in the July 2012 deficiency letter. Rather than debate the meet and confer requirements of L.R. CV-7(h), Exemplar Defendants—including Subway, which separately met and conferred on October 24, 2012—file this Motion with the understanding that GeoTag will not force similarly situated Defendants to re-cast the motion with reference to their particular infringement contentions on issues decided by the Court here.

Additionally, GeoTag has repeatedly stated that it would amend its infringement contentions upon receiving source code from any Defendant. (*See, e.g.*, Plaintiff's Motion for Entry of Case Management Plan and Docket Control Order, Case No. 2:10-cv-570, Dkt. No. 358, at 8 (“Any Defendant may produce Source Code Materials relevant to its accused instrumentalities at any time. Plaintiff shall serve amended infringement contentions with respect to any such Defendant's accused instrumentalities within 75 days of the date the Defendant makes its Source Code Materials relevant to those instrumentalities available to Plaintiff for inspection and review.”) (attached as Exhibit C).) On August 17, 2012, a large number of Defendants either produced source code to GeoTag or made source code available for

inspection and review by GeoTag. Over two months have passed, and GeoTag has failed to amend its infringement contentions to incorporate facts from the disclosed source code. Because GeoTag's contentions fail to place Defendants on proper notice of GeoTag's infringement theories, Exemplar Defendants seek an Order compelling GeoTag to amend its contentions to comply with P.R. 3-1.

III. LEGAL STANDARD

The Local Patent Rules set high expectations for the extent of preparation plaintiffs must exert before bringing patent infringement suits and require plaintiffs to disclose their infringement contentions before discovery has begun. *Am. Video Graphics, L.P. v. Elec. Arts, Inc.*, 359 F. Supp. 2d 558, 560 (E.D. Tex. 2005). Plaintiffs are required to “formulate, test, and crystallize their infringement theories” before providing their infringement contentions. *Connectel, LLC v. Cisco Sys., Inc.*, 391 F. Supp. 2d 526, 527 (E.D. Tex. 2005). Patent Rule 3-1 requires that a party claiming patent infringement must serve on all parties infringement contentions that include “[a] chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality.” (P.R. 3-1.) Plaintiffs must “rigorously analyze all publicly available information before bringing suit and must explain with great detail their theories of infringement.” *Connectel*, 391 F. Supp. 2d at 528.

Infringement contentions “providing vague, conclusory language or simply mimicking the language of the claims when identifying infringement fail[] to comply with Patent Rule 3-1.” *STMicroelect., Inc. v. Motorola, Inc.*, 308 F. Supp. 2d 754, 755 (E.D. Tex. 2004). To comply with Patent Rule 3-1, infringement contentions must “set forth particular theories of infringement with sufficient specificity to provide Defendants with notice of infringement beyond that which

is provided by the mere language of the patent claims themselves.” *Connectel*, 391 F. Supp. 2d at 527-28 (citation omitted).

The infringement contentions required by the Local Patent Rules are designed “to streamline the discovery process and provide both parties with the information required to litigate their case.” *Computer Acceleration Corp. v. Microsoft Corp.*, 503 F. Supp. 2d 819, 823 (E.D. Tex. 2007). GeoTag’s contentions do not provide this required information. Without such detailed infringement contentions, Defendants are unable to adequately prepare their defenses. *See Am. Video Graphics*, 359 F. Supp. 2d at 560.

IV. ARGUMENT

A. GeoTag’s Vague and Conclusory Infringement Contentions Are Insufficient to Satisfy P.R. 3-1

GeoTag’s generic infringement contentions are rife with vague and conclusory allegations that simply mimic the claim language and thwart the very purpose of P.R. 3-1—to notify Defendants of GeoTag’s *specific* infringement theories. Such unsupported allegations in GeoTag’s contentions are too numerous to capture in a single 15-page motion. Defendants describe a number of representative examples here. For instance, GeoTag alleges that the accused websites are “configured to search said topics,” yet the purported “topics” identified by GeoTag for the Exemplar Defendants *cannot be searched* as explained below. Similarly, every claim requires that entries be “dynamically replicated,” but GeoTag’s contentions ignore this key limitation entirely—and merely repeat the claim language without identifying any specific accused feature. Other deficiencies include GeoTag’s failure to identify where the Defendants’ accused websites contain “a database organized into a hierarchy of geographical areas” and GeoTag’s inability to show Defendants’ purported selection of geographical areas prior to selecting a topic as required by the claims. Because the Local Patent Rules do not allow GeoTag

to provide conclusory allegations in lieu of actual infringement theories, the Court should strike GeoTag's Infringement Contentions, or in the alternative, order GeoTag to comply with P.R. 3-1. *See Computer Acceleration Corp.*, 503 F. Supp. 2d at 823.

1. GeoTag's Infringement Contentions Ignore Limitations Requiring a Search Engine to Search, Maneuver Among, or Select Topics

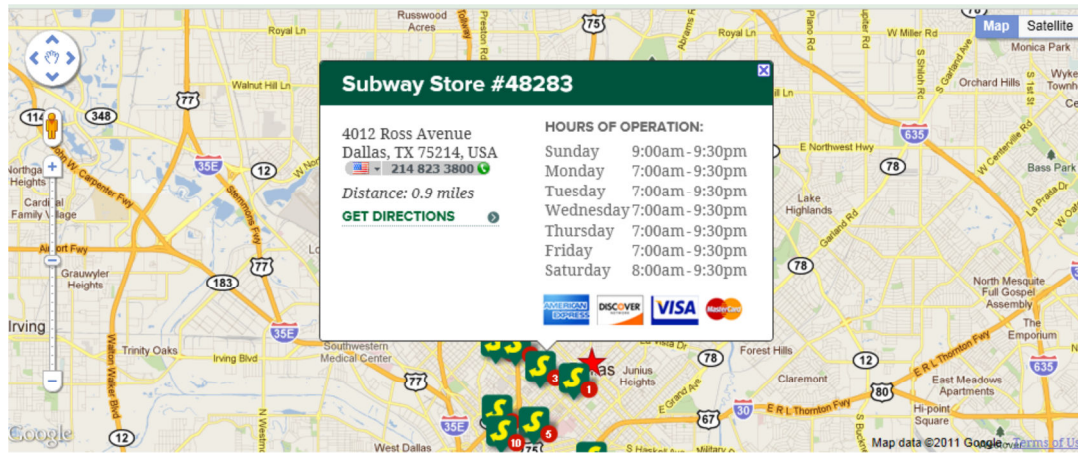
GeoTag's Infringement Contentions ignore limitations in several claims of the Patent-in-Suit by failing to identify topics that can be searched, selected, or maneuvered among by a search engine. Specifically, claims 1, 20, 34, 37, and their dependents require:

- "said search engine further configure[d] to search said topics" (claims 1, 20);
- "directing said search engine to maneuver among said topics" (claim 34); and
- "directing said search engine to select one of said topics" (claim 37).

Although GeoTag's Infringement Contentions purportedly identify topics,² the topics identified for the Exemplar Defendants are static text results that cannot be selected or searched.

For example, GeoTag's Infringement Contentions against Subway assert "the Accused Instrumentality includes a search engine... which is configured to search... topically (e.g. store hours, phone numbers, store number, and credit cards accepted along with distance)." (GeoTag's Infringement Contentions as to Subway, at 6 (attached as Exhibit D).) As the sole support for this statement, GeoTag offers the following screenshot from Subway's website:

² Defendants deny that the purported "topics" identified by GeoTag constitute "topics" as required by the claims.



SUBWAY Locations Near: Dallas, Tx

Subway Store # 30503

4422 Gaston Ave
Dallas, TX 75246, USA
214-828-1420
Distance: 0.47miles

GET DIRECTIONS

STORE DETAILS

Subway Store # 7944

2123 Greenville Ave
Dallas, TX 75206, USA
214-823-9898
Distance: 0.75miles

GET DIRECTIONS

STORE DETAILS

(*Id.* at 7;) *see also* www.subway.com/storelocator/default.aspx. This screenshot, however, provides no support for GeoTag’s conclusory allegations. The supposed topics identified by GeoTag—store hours, phone numbers, store number, and credit cards accepted along with distance—are only static images on the screen. That is, although website visitors can *view* this information, the website does not allow such visitors to *select or search* such information. Likewise, visitors to Brown Jordan’s Dealer Locator, www.brownjordan.com/storelocator/landing.do, cannot search or select “store name and telephone number,” contrary to GeoTag’s conclusory contentions. (*See id.* at 6-7.)

Despite receiving repeated notices of these discrepancies, GeoTag has made no effort to explain, for example, how such search engines are configured to search topics when the supposed topics cannot be searched. In each case, GeoTag instead offers only conclusory statements that parrot the claim language such as: “The search engine is also configured to search topics within the geographical search area.” (*See id.* at 6.) Such vague, conclusory

statements, however, “simply mimic[] the language of the claims when identifying infringement [and] fail to comply with Patent Rule 3-1.” *STMicroelec.*, 308 F. Supp. 2d at 755.

2. GeoTag’s Infringement Contentions Do Not Explain How “Entries” are “Dynamically Replicated”

Likewise, GeoTag’s Infringement Contentions repeatedly ignore limitations requiring “entries” to be “dynamically replicated.” Not only are these limitations present in every claim of the Patent-in-Suit, but these limitations were added by amendment during prosecution to overcome prior art rejections by the examiner. (*See* July 28, 1998 Examiner Interview Summary Record (attached as Exhibit E) (“The dynamic replication of an entry in narrow geographical area would overcome the prior art of record.”).) Specifically, asserted claims 1, 20, 31, and their dependents require:

- “wherein... at least one of said entries associated with a broader geographical area is dynamically replicated into at least one narrower geographical area” (claim 1);³
- “wherein at least one of said entries in said geographical area of relatively larger expanse is dynamically replicated into at least one of said geographical areas of smaller expanse” (claim 20); and
- “dynamically replicating an entry from broader geographical area into said geographical search area” (claim 31).

Again, however, because GeoTag’s Infringement Contentions do not address these limitations in any meaningful way, they fail to put Defendants on notice as to GeoTag’s infringement theory.

GeoTag’s Infringement Contentions against Subway, for example, assert that this limitation is met without any explanation of the concept of “dynamic replication.” Indeed, despite its critical importance, this claim element is buried in the discussion of several other limitations in GeoTag’s charts, and fails to identify what part, if any, of GeoTag’s discussion relates to “dynamic replication.” (*See* Exhibit D at 6). To the extent that GeoTag’s assertion that

³ As modified by the April 9, 2002 Certificate of Correction.

“the store locator returns a number of stores within or near a certain zip code, city, state, and/or street address” (*id.*) is meant to address this element, the Infringement Contentions make no effort to explain how or why the simple act of “return[ing] a number of stores” demonstrates the allegedly novel concept of “dynamic replication” that was critical to patentability.

GeoTag’s Infringement Contentions against the other Exemplar Defendants are equally vague. (*See, e.g.*, GeoTag’s Infringement Contentions as to ASICS (attached as Exhibit F)). For instance, GeoTag’s Infringement Contentions against ASICS make only the generic statement that “the find a retailer returns a number of stores within or near a certain city, state, and/or zip code.” (*Id.* at 7.) Again, GeoTag makes no effort to discuss whether “return[ing] a number of stores” constitutes “dynamic replication,” and if so, how. By glossing over this key claim element, GeoTag has failed to “set forth particular theories of infringement with sufficient specificity to provide Defendants with notice of infringement beyond that which is provided by the mere language of the patent claims themselves.” *Connectel*, 391 F. Supp. 2d at 527-28; *STMicroelec.*, 308 F. Supp. 2d at 755.

3. GeoTag’s Infringement Contentions Provide No Basis for the Assertion that a “Database of Information is Organized into a Hierarchy of Geographical Areas”

Because asserted claims 1 and 20 each require “a database of information organized into a hierarchy of geographical areas,” Patent Rule 3-1 requires GeoTag to specifically identify “a database of information” and show that it is organized into a “hierarchy of geographical areas.” GeoTag fails to make this specific identification and offers no basis for its assumption that this element is present in the accused websites.

By way of example, in the Subway store locator claim chart, GeoTag makes the general and conclusory assertion that “to return a search for stores by city, state, zip code and/or near a street address, the Accused Instrumentality includes a database of information organized into a

hierarchy of geographical areas.” (Exhibit D at 3.) GeoTag makes an almost identical conclusory allegation against the other Exemplar Defendants. (See GeoTag’s Infringement Contentions as to Caterpillar (attached as Exhibit G).) With this single unsupported allegation, GeoTag not only fails to identify a database, but also neglects to show how such a database is “organized into a hierarchy of geographical areas.” Indeed, GeoTag offers no basis for its assertion other than listing the input criteria for performing a store search. This input criteria, however, is irrelevant to the organization of any underlying database. Simply because a store search can be performed on the basis of a “city, state, zip code and/or near a street address” does not mean that a database of information must be organized in any particular way, much less hierarchically. GeoTag neither identifies a database organized into a hierarchy of geographical areas, nor provides a meaningful basis for demonstrating that a database organized in this manner exists in the accused website.

GeoTag’s Infringement Contentions regarding these claims thus fail to “identify[] specifically where each element of each asserted claim is found within each Accused Instrumentality,” as required by Patent Rule 3-1. GeoTag cannot satisfy its obligations under the Local Patent Rules by repeating the claim language, but is instead required to be as specific as possible in making its infringement contentions. See *Smartphone Tech. LLC v. HTC Corp.*, Case No. 6:10-cv-580, 2012 WL 1424173, at *3 (E.D. Tex. Mar. 16, 2012). Without specific contentions, Defendants cannot adequately prepare their defenses.

4. GeoTag’s Infringement Contentions Do Not Show the Search Engine Being Configured to Select One of the Hierarchies of Geographical Areas Prior to Selection of a Topic

GeoTag also fails to identify a “search engine further configured to select one of said hierarchy of geographical areas prior to selection of a topic”⁴ as required by claim 1. For example, in Subway’s Infringement Contentions, GeoTag makes the general and conclusory assertion that the search engine “is configured to search geographically (*e.g.*, zip code, city, state and/or street address) and topically (*e.g.*, store hours, phone numbers, store number, and credit cards accepted along with distance).” (*See* Exhibit D at 6.) However, GeoTag never identifies how the search engine searches geographically and topically, nor does it explain whether or how the search engine searches in the order required by the claim—first geographically, and then topically. Indeed, by way of example, Subway’s accused website is not configured to search topically; it merely conducts geographical searches. (*See supra* Section IV.A.) Nevertheless, even if the Subway store locator could search both geographically and topically, GeoTag never explains how a search engine selects one of the hierarchies of geographical areas *prior to* selecting a topic. In that context, if GeoTag alleges that the initial zip code search constitutes “select[ing] one of said hierarchy of geographical areas,” GeoTag must also identify a topic that can be selected after the zip code search. As discussed previously, the purported topics (“store hours, phone numbers, store number, and credit cards accepted along with distance”) simply cannot be selected or searched. (Exhibit D at 7; *see also* www.subway.com/storelocator/default.aspx.) Therefore, GeoTag fails to identify any topic covered by the claim or on what basis it has grounds to believe that the search engine is configured to search in such a way.

Simply put, GeoTag’s Infringement Contentions regarding asserted claim 1 do not conform to the standards of Patent Rule 3-1. GeoTag is required “to specifically delineate how

⁴ As modified by the April 9, 2002 Certificate of Correction.

the operation of any Accused Product corresponds to any claim limitation.” *Linex Tech., Inc. v. Belkin Int’l, Inc.*, 628 F. Supp. 2d 703, 709 (E.D. Tex. 2008) (granting defendant’s motion to compel infringement contentions for failing “to explain how each Accused Product is asserted to infringe each claim limitation”). GeoTag cannot rely on vague, conclusory language or simply repeat the language of the asserted claims. *See Davis-Lynch, Inc. v. Weatherford Int’l, Inc.*, 2009 WL 81874, at *2 (E.D. Tex. Jan. 12, 2009) (ordering plaintiff to amend its infringement contentions because the “charts do little more than parrot the claim language”). However, that is precisely what GeoTag has done. In each of its infringement charts, GeoTag does little more than mimic the language of the patent claim.

B. GeoTag Has Had Access to or Received Source Code from Defendants and Has Failed to Amend Its Infringement Contentions Accordingly

In its October 5, 2012, response to Defendants’ letter addressing the deficiencies of the Infringement Contentions, GeoTag claimed that it could not provide more detailed contentions without access to Defendants’ source code. (*See* October 5, 2012 Letter from D. Bennett to M. Bittner (“A review of the source code for the search engine would provide further evidence of the order in which the criteria are searched, however, the source code is not publicly available.”) (attached as Exhibit H).) However, on August 17, 2012, a large number of Defendants either produced source code or made source code available to GeoTag for inspection and review.⁵ GeoTag has failed to amend its Infringement Contentions to include facts disclosed in the available source code.

In *IP Co. v. Oncor Electric Delivery Company LLC*, No. 2:09-cv-037 (E.D. Tex. filed Jan. 29, 2009), Judge Folsom ordered the plaintiff to supplement or amend its infringement

⁵ The July 2010 Locator Defendants produced technical documents and made source code available even earlier, in the summer of 2011.

contentions after the defendants made their source code available to the plaintiff. The Court in that case held that because the plaintiff had access to defendants' source code, its initial conclusory infringement contentions did not comply with P.R. 3-1. *Id.* Additionally, in *Computer Acceleration Corp.*, 503 F. Supp. 2d at 824, this Court held that the plaintiff's lack of diligence in amending its infringement contentions after receiving source code from the defendant weighed in favor of striking those infringement contentions. *See also Am. Video Graphics*, 359 F. Supp. 2d at 561 ("Once [Plaintiff] has access to the code, it will be able to supplement its 3-1(c) disclosures and better inform Defendants as to its infringement contentions."). GeoTag has had access to the source code of a large number of Defendants for over two months (and for some Defendants, over a year-and-a-half). Thus, GeoTag should be required to amend its Infringement Contentions to incorporate facts disclosed in the source code and other produced documents.

V. CONCLUSION

GeoTag's Infringement Contentions fail to satisfy P.R. 3-1 because they provide vague conclusory allegations and do not "identify[] specifically where each element of each asserted claim is found within each Accused Instrumentality." Additionally, GeoTag has failed to amend its Infringement Contentions to incorporate facts disclosed by a large number of Defendants in their source code. For the reasons discussed herein, Exemplar Defendants respectfully request that the Court enter an Order striking GeoTag's Infringement Contentions for failure to comply with P.R. 3-1, or in the alternative, compelling GeoTag to amend its Infringement Contentions to comply with P.R. 3-1 within thirty days of such Order.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 19, 2012, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Michael A. Bittner

Michael A. Bittner

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel has complied with the meet and confer requirement of Local Rule CV-7(h) and that the motion is opposed. Counsel for Plaintiff and the Exemplar Defendants conferred via telephone on October 12 and 24, 2012. No agreement could be reached. Discussions have conclusively ended in an impasse, leaving an open issue for the Court to resolve.

In addition, only five of the over four hundred Defendants in these cases are raised here as Exemplar Defendants, the contentions served on the remaining Defendants are deficient for the same or similar reasons described herein. Over 334 Defendants joined in a letter pointing out specific deficiencies in GeoTag's Infringement Contentions. Counsel for GeoTag purported to refuse to acknowledge that a proper meet and confer occurred except as to those Defendants identified as exemplars in Defendants' letter outlining the various deficiencies in GeoTag's contentions—even though the deficiencies for each of the Defendants are generally the same—but Andrew Spangler, GeoTag's Local Counsel, agreed in the same call that GeoTag would update its infringement contentions with respect to all similarly-situated Defendants if GeoTag lost this issue. Based on Mr. Spangler's agreement, the remaining Defendants join this motion in their respective cases and request relief as to GeoTag's individual infringement contentions against them.

/s/ Michael A. Bittner

Michael A. Bittner