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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

<p>CLEARONE COMMUNICATIONS, INC., a Utah corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>ANDREW CHIANG, an individual, JUN YANG, an individual, LONNY BOWERS, an individual, WIDEBAND SOLUTIONS, INC., a Massachusetts corporation, and BIAMP SYSTEMS, CORPORATION, INC., an Oregon corporation,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 2:07-cv-00037-TC-DN</p> <p>Chief Judge Tena Campbell Magistrate Judge David O. Nuffer</p> <p style="text-align: center;">WIDEBAND’S MEMORANDUM OPPOSING CLEARONE’S SECOND MOTION FOR ENTRY OF SEARCH PROTOCOL ORDER (DOC. 673)</p>
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Defendants Chiang, Yang, Bowers, and WideBand Solutions, Inc. (collectively, “WideBand”), through counsel, submit WideBand’s Memorandum Opposing ClearOne’s Second Motion for Entry of Search Protocol Order (Doc. 673).

INTRODUCTION

Subsequent to the Court's November 5, 2007 Order, plaintiff ClearOne's counsel and WideBand's counsel exchanged letters in an effort to finalize a search protocol to inspect the mirror-imaged hard drives of certain of the WideBand defendants' computers. Essentially, there are three categories of search criteria: "Name" (searching for names of specific individuals); "Tech" (searching for a particular technological reference); and "License" terms (searching for terms relating to the licensing of certain source code).

As discussed below, the only real dispute at this point appears to be whether certain connectors should be included in searches. In other words, instead of simply searching for "Kevin" (as ClearOne suggests), forcing WideBand to review every document that mentions an employee named Kevin, is it reasonable to require some connectors that would narrow the search results to subjects relevant to the issues in this lawsuit?

ARGUMENT

On November 20, 2007, ClearOne's counsel, James Magleby, stated that, in light of the Court's November 5 Order, ClearOne was accepting WideBand's previously proposed search protocol, with the addition of five search terms and the clarification that the parties would follow the Court's second order¹ regarding searching the electronic data contained on the mirror-imaged hard drives of certain WideBand defendants' computers.

On December 5, 2007, WideBand's previous counsel, Paul Gilmore, sent Magleby a letter in response. Gilmore expressed concern that, unless the search terms were tailored to individual

¹ Docket No. 282, filed July 6, 2007.

document production requests, it would be overly burdensome for WideBand to comply with the Court's order requiring it to "review the identified documents to determine which are responsive to document requests," ² Gilmore noted that, during this litigation, ClearOne had propounded seven sets of requests for production of documents comprising more than one hundred individual requests.

Rather than attempt to negotiate further clarification of the search protocol, ClearOne filed this motion. Ironically, though, ClearOne's motion appears to acknowledge WideBand's concerns at least in part, as its memorandum actually does separate the search terms into four categories, and identifies the requests for production to which the individual categories of search terms may be relevant, as WideBand originally suggested.

WideBand, which had previously agreed to the use of various search terms, does not oppose the use of the five additional terms suggested by ClearOne. Nor does WideBand oppose ClearOne's grouping of the search terms and the applicable search requests into four categories. WideBand's single request is that the "Name" and "License" search terms be combined with the "Tech" terms in order to avoid increasing even more the high burden and cost demanded by this case. Under the Court's November 5 order, every document that meets the search criteria will have to be reviewed by WideBand's counsel for relevance and responsiveness to ClearOne's document production requests. Unless there is some means of narrowing the results, WideBand will be forced to incur significant expense sifting through numerous documents that are not even remotely relevant to the case.

² November 5, 2007 Order at 4.

WideBand's characterization of the search terms, and its suggestions for combining the terms to narrow the results, follows.

(a) *"Name" Search Terms*

As described in ClearOne's memorandum, ten of the eleven search terms listed by ClearOne under its section I ("Documents Related to the Harman License Agreement ...") are names of individuals or entities whom ClearOne believes may have corresponded with the WideBand defendants: "harman"; "hart_"; "votsis"; "reed_"; "summers"; "wright"; "yan_"; "kevin"; "bss" and "hmgsl." Fourteen of the fifteen search terms in ClearOne's section II ("Documents Related to the WideBand-Biamp License Agreement ...") are described as names of entities or individuals with whom the WideBand defendants may have corresponded: "biamp" or "bi_amp"; "czyzewski"; "matt"; "kotvis"; "payette"; "mckenzie"; "lockhart"; "ralph"; "demori"; "dippert"; "gollnick"; "houeland"; "behrens"; and "krysyuk." Finally, seven of the eighteen search terms in ClearOne's section III ("Documents Related to ClearOne and Its Technology ...") are also described by ClearOne as names of entities or individuals with whom the WideBand defendants may have corresponded: "clearone" or "clear_one"; "gentner"; "bathurst"; "foley"; "thurston"; "intervision" or "inter_vision"; and "goldfound" or "gold_found."

(b) *"License" Search Terms*

The search terms contained in ClearOne's section IV ("Documents Related to Any Other Efforts by WideBand to License or Sell the WideBand Code ...") are described herein as "License" terms which, according to ClearOne, are related to WideBand's alleged efforts to license or sell technology: "license"; "acquisition" or "acquire"; "invest"; "merge"; "letter of intent"; and "royalt."

(c) *“Tech” Search Terms*

Twelve of the search terms contained in ClearOne’s supporting memorandum are described herein as “Tech” terms which, according to ClearOne, are related to technology, code, and/or software: “honeybee” or “honey bee”; “peng”; “accu_mic” or “accumic”; “acoustic echo cancellation” or “aec”; “bgnoise”; “chat”; “_dec”; “killerbee” or “killer_bee”; “noise cancellation” or “noise suppression”; “xap”; and “clearvoice.”

(d) *Combining the Terms*

As currently defined, ClearOne’s proposed search criteria would produce an overly burdensome number of documents, many of which would be unrelated to this litigation. Using a boolean connector to combine the individual “Name” and “License” search terms with the “Tech” search terms will narrow the number of responsive documents, and avoid having to review numerous documents that have no relation to this case.

As an example of the efficacy of combining search terms, a Westlaw search for Utah cases using the terms “discovery” and “request” separately returns 1,726 and 6,280 hits respectively, for a total of 8,006 total hits. Combining the terms with an “and” connector, wherein the search looked for documents containing both terms, in any order, resulted in 839 hits, approximately one-tenth that number.

A Name or License search without any connectors is not reasonably calculated to lead to the discovery of admissible evidence. There is no reason to believe that any correspondence between WideBand and the entities and persons in the “Name” search that does not mention any of the “Tech” or “License” terms would be relevant to the issues in this litigation. Similarly, there exists

no reason to believe that anytime the WideBand defendants used the term “invest,” they were discussing the technology relevant to this case.

CONCLUSION

For the aforementioned reasons, WideBand requests the Court enter a search protocol incorporating the search terms to which the parties have agreed, but requiring the use of the boolean term “and” combining the “Name” and “License” search terms with the “Tech” search term, as described herein.

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