

AUGME TECH., INC v. YAHOO! INC., Appeal Nos. 2013-1121, -1195 (Fed. Cir. June 20, 2014). Before Moore, Schall and Reyna. Appealed from N.D. Cal. (Judge Spero).

Background:

Augme sued Yahoo for infringement of two patents directed to adding function to a Web page. The claims recited a first code module embedded in a web page that issues a command that retrieves (or downloads) a second code module. The accused system retrieved suitable advertisements for display on the webpage. The district court granted summary judgment of non-infringement for several reasons, including because Yahoo's embedded code did not directly download the advertisements. Rather, Yahoo's first code module downloads an intermediary "smart code," which then downloads the advertisement.

Issue/Holding:

Did the district court err in granting Yahoo's summary judgment of non-infringement?
No, affirmed.

Discussion:

The Federal Circuit first agreed with the claim construction adopted by the district court, which distinguished between the "embedded" first module and the "downloaded" or "retrieved" second module. Specifically, the first module was code contained within the HTML code defining the webpage, while the second module was code later downloaded to the webpage through an issued command. Linked code could not be embedded code, because it would still need to be downloaded.

On infringement, the Federal Circuit concluded that Yahoo's system does not include an "embedded" code module to initiate retrieval of a second code module either literally or under the doctrine of equivalents. There was no literal infringement because the first code module did not "issue a first command to retrieve a second code module." Rather, the first code module retrieved the intermediate "smart code," which retrieved the second code module. There was likewise no infringement under the doctrine of equivalents because construing the embedded first module and the linked smart code as a single module would eliminate the distinction made in the claim construction between embedded code and "retrieved" or "downloaded" code.