

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LYCOS, INC.,)
Plaintiff,)
)
v.) C.A. No. 07-11469-MLW
)
BLOCKBUSTER, INC.,)
Defendant.)

ORDER

WOLF, D.J.

June 25, 2010

Plaintiff Lycos, Inc. ("Lycos") and defendant Blockbuster, Inc. ("Blockbuster") have agreed to settle this case, but have made the settlement contingent upon the court vacating its order granting summary judgment in favor of Blockbuster with respect to infringement of U.S. Patent No. 5,867,799 (the "'799 patent"). This court encouraged the parties to explore settlement of this case. However, the court did not anticipate the current request to vacate its prior decision as part of the proposed settlement, perhaps because it has never received such a request before.

As thoroughly and thoughtfully described by Judge Douglas P. Woodlock in Vertex Surgical, Inc. v. Paradigm Biodevices, Inc., 648 F. Supp. 2d 226 (D. Mass. 2009), the question of whether to vacate an order, including an interlocutory order, involves legal issues that the Supreme Court and First Circuit have addressed. The parties have not, however, briefed the implications of that jurisprudence for the instant case. Nor has there been any

explanation of why Lycos, particularly, values vacatur or why such a public action is necessary to the private settlement of this case.

Accordingly, it is hereby ORDERED that the parties shall, by July 30, 2010:

1. Stipulate to the dismissal of this case without the vacatur of the order granting summary judgment for Blockbuster on Lycos's claim that it infringed the '799 patent; or

2. File memoranda and affidavits in support of the motion to vacate which address the concerns described in Vertex supra and the decisions that it discusses.

/s/ Mark L. Wolf
UNITED STATES DISTRICT JUDGE