

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|------------------------------|---|-----------------------------|
| SOUND VIEW INNOVATIONS, LLC, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 16-116-RGA |
| | : | |
| FACEBOOK, INC., | : | |
| | : | |
| Defendant. | : | |

ORDER

I now have Plaintiff’s “Motion for Vacatur” (D.I. 309) pending before me. This is patent case. I dismissed the asserted claims of Patent No. 8,095,593 for lack of patentable subject matter. (D.I. 47 & 48). I did claim construction and found one asserted claim of Patent No. 7,412,486 indefinite (D.I. 100 & 113).

The parties settled their differences and filed a stipulation of dismissal on January 8, 2018.

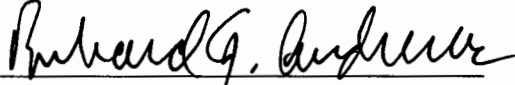
The motion for vacatur seeks to vacate my claim construction of “receiving message data of a first type containing the contents of a first message over the open message connection,” and the decision that the asserted claims of the ‘593 patent were invalid under § 101. Plaintiff says that vacatur is appropriate because Plaintiff should not be penalized for settling the case, when it earlier wanted to appeal my § 101 ruling. Plaintiff says it has saved the Court a lot of effort as a complex case does not have to be tried. It is pretty clear, however, that the parties have settled for their own reasons, presumably because each side regarded the settlement as a better alternative than continued litigation.

I have had this issue arise three times before. See *CallWave Communications LLC v. AT&T Mobility LLC*, No. 12cv1701-RGA, D.I. 755 (Oct. 10, 2017); *Purdue Pharma LP v. Acura Pharmaceuticals Inc.*, No. 15cv292-RGA, D.I. 63 (May 24, 2016); *Alltech Associates Inc. v. Teledyne Instruments Inc.* No. 13cv425-RGA, D.I. 156 (Feb. 12, 2015). So have other judges of this District. See *Forest Labs, Inc. v. Teva Pharmaceuticals USA Inc.*, 2016 WL 3606177 (D.Del. May 25, 2016).

I will deny the motion, without prejudice to refile a fully briefed motion. I think I should only grant such a motion if there are exceptional circumstances present. See *Cisco Systems, Inc. v. Telcordia Techs, Inc.*, 590 F.Supp.2d 828, 830 (E.D. Tx. 2008).¹ No such circumstances have been suggested, and none occur to me.

The motion for vacatur is **DENIED** without prejudice.

IT IS SO ORDERED this 9 day of January, 2018.


United States District Judge

¹ In one of the previous times when this issue was raised, the Court of Appeals remanded the case for application of “the principles enunciated in *United States Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 29 (1994).” That case states, “exceptional circumstances may conceivably counsel in favor of [vacatur].” *Id.*