

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CNET NETWORKS, INC.

Plaintiff,

v.

ETILIZE, INC.

Defendant.

No. C 06-05378 MHP

MEMORANDUM & ORDER

Re: Defendant’s Motion for Summary Judgment

Plaintiff CNET Networks, Inc. (“CNET”) brought this action against defendant Etilize, Inc. (“Etilize”) for infringement of United States Patent No. 6,714,933 (“the ‘933 patent”) and United States Patent No. 7,082,426 (“the ‘426 patent”). The ‘426 patent is a continuation in part of the ‘933 patent, which claims methods and systems for automatically creating an electronic catalog of product information gathered from various internet websites. Now before the court is defendant’s motion for summary judgment of non-infringement of plaintiff’s ‘933 and ‘426 patents because first, all of defendant’s allegedly infringing activities occur outside the United States in Pakistan and therefore no liability attaches under 35 U.S.C. § 271(a); and second, because the catalog imported into and used by customers in the United States is not a “product” within the meaning of 35 U.S.C. § 271(g). Having considered the submissions and arguments of the parties, the court enters the following memorandum and order.

BACKGROUND

Plaintiff CNET provides customers a central shopping portal from which they can search for product information and purchase products from a variety of vendors. Pl.’s Opp. at 2. To this end,

1 CNET owns intellectual property in the field of automated content aggregation, catalog generation
2 and online commerce. Id. The CNET patents at issue in this action are the ‘933 patent and its
3 continuation-in-part, the ‘426 patent. In its Infringement Contentions, CNET asserts that Etilize
4 infringes claims 1, 15, 28, 29, 36 and 38 of the ‘933 patent and claims 1, 14, 16, 20, 23, 24, 39, 52,
5 60 and 95 of the ‘426 patent. Def.’s Mtn. at 5–6. Seven of these claims—claims 1 and 28 of the
6 ‘933 patent and claims 1, 39, 52, 60 and 95 of the ‘426 patent—are independent claims, and the
7 remainder are dependent claims. The seven independent claims can be generally arranged in five
8 groups, two of which are method claims and three of which are purported “system” claims:

9 Method Claims

- 10 1. a method for aggregating product information from a plurality of
11 sources in a networked computer environment (claim 52 of the ‘426
12 patent and claim 1 of the ‘933 patent);
13 2. a method for creating a product catalog stored on computer readable
14 media (claims 1 and 39 of the ‘426 patent);

15 System Claims

- 16 3. a system for aggregating product information from a plurality of sources
17 in a networked computer environment (claim 95 of the ‘426 patent);
18 4. a system for creating a product catalog (claim 60 of the ‘426 patent); and
19 5. a computer architecture for effecting commerce in a networked
20 environment comprising of
21 a. a client computer;
22 b. a merchant server;
23 c. a manufacturer server;
24 d. a shopping server that includes a memory device capable of storing
25 a product database and that is operative to provide a crawler for
26 visiting a plurality of sources hosted on the merchant and
27 manufacturer servers; and
28 e. a communication channel coupling the shopping server to the
merchant and manufacturer server, and coupling the shopping
server to the client computer
(claim 28 of the ‘933 patent).

Farooqui Dec., Exh. A (‘933 patent) & Exh. B (‘426 patent).

Defendant Etilize is a Delaware corporation that markets and sells electronic product
catalogs stored on a server. Hameed Dec. ¶ 6; Amended Joint Statement of Undisputed Facts ¶ 1.
The catalogs contain product information—such as price, general descriptions, detailed

1 specifications, unique product IDs, and images—collected from the public websites of many
2 different manufacturers and suppliers. Hameed Dec. ¶ 4; Mitchell Dec., Exh’s. F & G. Etilize
3 markets and sells the product catalog to distributors and retailers like CompUSA who, in turn, offer
4 for sale to end-users various products such as digital cameras and computers. Id. Rather than create
5 a catalog of available products on its own, customers such as CompUSA pay Etilize for a
6 subscription service called SpeX, which gives them the right to access and use the Etilize catalog.
7 Hameed Dec. ¶ 4–5. The product catalog is a data file, either in comma delimited or XML format.
8 Hameed Dec. ¶ 6; Mitchell Dec., Exh’s. F & G. Using an FTP client, the catalog, i.e. the data file, is
9 electronically transmitted from a remote server to the customer’s local hard drive. Id. After the data
10 file is downloaded and installed on the customer’s computer, the file is imported into the customer’s
11 own database software application so that it may be searched. Id. The catalog is currently located
12 on a server in Canada, but from 2003 until March 2007, the catalog was made available on a server
13 located in Los Angeles¹. Hameed Dec. ¶ 6.

14 All of the product information contained in the Etilize catalog is collected by Etilize-
15 Pakistan, a separate Pakistani corporation located in Karachi, Pakistan. Hameed Dec. ¶ 8; Exh. A
16 (“Master Services Agreement”). Pursuant to an agreement between Etilize and Etilize-Pakistan,
17 Etilize owns the product catalog, but Etilize-Pakistan performs the work to collect the information
18 and assembles it into a catalog. Id.; Mitchell Dec., Exh. K, Hameed Dep. 80:3–5. Etilize-Pakistan
19 employs human operators in Pakistan who visit vendor websites, one at a time, to collect the
20 relevant product information and enter it into a template which is then entered into the catalog.
21 Hameed Dec. ¶ 8. In some circumstances, Etilize-Pakistan’s employees create and execute
22 computer programs in Pakistan to automatically obtain and extract information from a website. Id.

23 24 LEGAL STANDARD

25 Summary judgment is proper when the pleadings, discovery and affidavits show that there is
26 “no genuine issue as to any material fact and that the moving party is entitled to judgment as a
27 matter of law.” Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of the
28

1 case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a material fact is
2 genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving
3 party. Id. The party moving for summary judgment bears the burden of identifying those portions
4 of the pleadings, discovery and affidavits that demonstrate the absence of a genuine issue of material
5 fact. Celotex Corp. v. Cattrett, 477 U.S. 317, 323 (1986). On an issue for which the opposing party
6 will have the burden of proof at trial, the moving party need only point out “that there is an absence
7 of evidence to support the nonmoving party’s case.” Id.

8 Once the moving party meets its initial burden, the nonmoving party must go beyond the
9 pleadings and, by its own affidavits or discovery, “set forth specific facts showing that there is a
10 genuine issue for trial.” Fed. R. Civ. P. 56(e). Mere allegations or denials do not defeat a moving
11 party’s allegations. Id.; Gasaway v. Northwestern Mut. Life Ins. Co., 26 F.3d 957, 960 (9th Cir.
12 1994). The court may not make credibility determinations, and inferences to be drawn from the
13 facts must be viewed in the light most favorable to the party opposing the motion. Masson v. New
14 Yorker Magazine, 501 U.S. 496, 520 (1991); Anderson, 477 U.S. at 249.

15 The moving party may “move with or without supporting affidavits for a summary judgment
16 in the party’s favor upon all or any part thereof.” Fed. R. Civ. P. 56(a). “Supporting and opposing
17 affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in
18 evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated
19 therein.” Fed. R. Civ. P. 56(e).

20 21 DISCUSSION

22 Defendant Etilize moves for summary judgment of non-infringement on two separate bases.
23 First, Etilize argues that it does not infringe CNET’s patents because neither it nor its customers
24 “use” the claimed systems “within the United States” as required under section 271(a). Second,
25 Etilize argues that it does not infringe CNET’s patents because the catalog it imports into the United
26 States, although “made by” methods and systems claimed in the ‘933 and ‘426 patents, is
27 nevertheless not a “product” within the meaning of section 271(g).

1 I. Section 271(a)

2 Section 271(a) of title 35 sets forth the requirements for a claim of direct infringement of a
3 patent. It provides:

4 Except as otherwise provided in this title, whoever without authority
5 makes, uses, offers to sell, or sells any patented invention, within the
6 United States or imports into the United States any patented invention
7 during the term of the patent therefor, infringes the patent.

8 35 U.S.C. § 271(a). The territorial reach of section 271(a) is limited since the section is only
9 applicable to patent infringement that occurs within the United States. NTP, Inc. v. Research in
10 Motion, Ltd., 418 F.3d 1282, 1313 (Fed. Cir. 2005).

11 “Under section 271(a), ‘use’ of a patented method or process is fundamentally different from
12 ‘use’ of a patented system or device.” Id. at 1317. Use of a *method* claim does not give rise to
13 infringement under section 271(a) unless each step or stage of the claimed method is performed
14 within the United States. Id. at 1318. Use of a *system* claim, however, may give rise to infringement
15 under section 271(a) if this country is “the place at which the system as a whole is put into service,”
16 in other words, the United States is “the place where control of the system is exercised and
17 beneficial use of the system obtained.” Id. at 1317. Even if some part or component of a system is
18 located outside the United States, infringement may still occur under section 271(a) as long as the
19 “situs of ‘use’” of the system is inside the United States. See id. at 1317.

20 In NTP, the patent claimed was “a system for transmitting originated information from one
21 of a plurality of originating processors in an electronic mail system to at least one of a plurality of
22 destination processors in the electronic mail system.” Id. at 1294. This patent was embodied in the
23 BlackBerry wireless email devices sold by defendant Research in Motion (“RIM”) to customers in
24 the United States. Id. at 1289. Defendant RIM argued for non-infringement under section 271(a)
25 because the BlackBerry Relay component of the accused system was located in Canada. Id. at 1313.
26 The court rejected this argument, holding that “[w]hen RIM’s United States customers send and
27 receive messages by manipulating the handheld devices in their possession in the United States, the
28 location of the use of the communication system as a whole occurs in the United States.” Id. at
1317. RIM’s U.S. customers “controlled the transmission of the originated information and also

1 benefitted from such an exchange of information.” Id. at 1317. The location of the Relay in
2 Canada, therefore did not preclude infringement of the system claim under section 271(a). Id.

3 In this case, CNET does not contend that Etilize infringes the *method* claims under section
4 271(a) because under NTP, every step of the method must be performed within the United States for
5 infringement to arise. Instead, CNET argues that Etilize infringes the *system* claims because use of
6 the system as a whole occurs within the United States, even though some components of the system
7 are located abroad. CNET argues for indirect infringement under 271(b) because Etilize induces
8 both Etilize’s customers and Etilize-Pakistan to use the system, and in addition, CNET argues for
9 direct infringement under section 271(a) because Etilize itself uses the system within the United
10 States. The court will address each theory of infringement below.

11 CNET argues that Etilize’s customers directly infringe the system claims because they use
12 and download the product catalog within the United States. Accordingly, CNET argues, Etilize is
13 liable for indirect infringement under section 271(b) because by making the catalog available to
14 customers and by selling the SpeX subscription service that allows customers to access the catalog,
15 Etilize induces its customers’ infringement. The system claims, however, are for aggregating
16 product information and creating a product catalog, both of which have been completed at the time
17 the customer downloads and uses the catalog. The data collection and catalog creation occur
18 statically, prior to and independent of the customer’s download. They do not occur dynamically, in
19 response to and only as a result of a customer downloading or using the catalog. This is not a case
20 like NTP where each time the customer used the BlackBerry device to send and receive email, the
21 customer was also using the claimed system for transmitting the email. Here, customers use the
22 result of the system—the product catalog—not the system itself. The court concludes that because
23 Etilize’s customers do not use the claimed system, the customers cannot directly infringe the system
24 under section 271(a). Accordingly, Etilize does not induce its customers to infringe by making the
25 SpeX subscription service available and by providing user-names and passwords that allow access to
26 the catalog. The court concludes Etilize cannot be indirectly liable for its customers’ use of the
27 catalog under section 271(b).

28

1 CNET argues in the alternative that Etilize-Pakistan directly infringes the system claims
2 because until March 2007, the catalog was stored on a server located in the United States, and when
3 aggregating the product information, Etilize-Pakistan visited various merchant and manufacturer
4 websites that are also located on servers in the United States. The situs of use of the system as a
5 whole, however, is Pakistan, not the United States. The product information is aggregated,
6 assembled and organized in Pakistan. The human operators who visit the websites to collect product
7 information are located in Pakistan, as are the employees who develop the software to collect the
8 data automatically. Although the data collection process may involve visiting a merchant or
9 manufacturer website located on a server in the United States, the situs of use of the system is still
10 Pakistan because the website visit is initiated either by human operators in Pakistan or by computer
11 code written by engineers in Pakistan and executed from a server in Pakistan. Likewise, the creation
12 of the catalog occurs in Pakistan because once the information is collected and organized, a “master”
13 catalog is generated and stored on a server located in Pakistan.

14 CNET makes much of the fact that additional copies of the catalog are transmitted to servers
15 in the United States. But as previously mentioned, the system claims speak only to data collection
16 and catalog creation, both of which are complete at the time a customer or Etilize initiates a
17 download. Even assuming that the system claims speak to transmission and storage of a copy
18 abroad once the master catalog is created and stored in Pakistan, this is still only one component of
19 the system, the whole of which is put into service in Pakistan. That a copy of the catalog is located
20 on a server in the United States, therefore, does not change the fact that overall control of the data
21 collection and catalog creation is exercised from Pakistan. The court concludes that because Etilize-
22 Pakistan does not use the system “within the United States” as required under section 271(a),
23 Etilize-Pakistan does not directly infringe the system. Accordingly, Etilize does not induce Etilize-
24 Pakistan to infringe even if, as asserted by CNET, Etilize instructs and directs Etilize-Pakistan on
25 what product information to collect and how to collect it². The court concludes that Etilize is not
26 indirectly liable under section 271(b) because Etilize-Pakistan does not directly infringe under
27 section 271(a).

1 As a final basis for liability, CNET argues that Etilize directly infringes because 1) Etilize,
2 like its customers, downloads and uses the catalog and 2) Etilize directs its management, sales and
3 marketing operations from within the United States. As to the first theory of Etilize's direct
4 infringement, the court has already explained that use of the catalog—the result of the system—is
5 not use of the system itself. As to the second theory of Etilize's direct infringement, the patent
6 claims do not speak to these types of business activities. Rather, they speak to information
7 aggregation and catalog creation, both of which occur in Pakistan. In sum, the court concludes that
8 there are no genuine issues of material fact as to whether, under section 271(a), Etilize directly or
9 indirectly infringes the method or system claims. The court grants Etilize's motion for summary
10 judgment of non-infringement under section 271(a).

11
12 II. Section 271(g)

13 Section 271(g) of title 35 sets forth a basis for infringement in situations where the patented
14 process is used abroad, but where the product made by the patented process is imported, sold or used
15 within the United States. It provides:

16 Whoever without authority imports into the United States or offers to sell,
17 sells, or uses within the United States a product which is made by a
18 process patented in the United States shall be liable as an infringer, if the
importation, offer to sell, sale or use of the product occurs during the term
of such process patent.

19 35 U.S.C. § 271(g). The Federal Circuit has interpreted the term “made” as used in section 271(g)
20 to mean “manufactured” and the term “product” to mean a “physical article.” Bayer AG v. Housey
21 Pharmaceuticals, Inc., 340 F.3d 1367, 1377 (Fed. Cir. 2003).

22 In Bayer, the defendant Housey owned a patent claiming “a method of screening for
23 substances which specifically inhibit or activate a particular protein affecting the cultural or
24 morphological characteristics of the cell expressing the protein.” Id. at 1369. The court described
25 the disclosed method as a research “process for identifying the effect that different agents have on
26 the activity of the suspect protein.” Id. Housey accused plaintiff Bayer of infringing the patent
27 under section 271(g) because first, Bayer imported into the United States knowledge and
28

1 information reflecting identification or characterization of a drug acquired from using the patented
2 research methods; and second, Bayer imported into the United States a drug that was determined to
3 be an inhibitor or activator of a target protein using the patented methods. Id. at 1370. The court
4 held that the claimed method produced “information in the abstract,” i.e. “knowledge that a
5 substance possesses a particular quality,” and that mere information and knowledge were not
6 physical goods. Id. at 1376–1377. The information generated by the method therefore was not a
7 “product” within the meaning of section 271(g). Id. Moreover, although the drugs were physical
8 goods, they were not “made by” the patented process because “the process must be used directly in
9 the manufacture of the product, and not merely as a predicate process to identify the product to be
10 manufactured.” Id. at 1378. Although the drug was identified as useful through the use of the
11 patented research method, the process of identification and generation of data were not steps in the
12 actual manufacture of the final drug product. Id. at 1377.

13 Following Bayer, the Federal Circuit re-visited section 271(g) in the NTP BlackBerry case.
14 The district court in NTP held that “‘wireless electronic email’ specially formatted by a patented
15 process” is a product under section 271(g). NTP, 418 F.3d at 1323. On appeal to the Federal
16 Circuit, defendant RIM argued that the product created by the NTP process is data or information,
17 which according to Bayer is not protected under section 271(g). Id. Plaintiff NTP argued that the
18 “email packets” being transmitted had a “‘tangible’ structure which include[d] the interface address,
19 [a radio frequency] address, and the inputted message.” Id. Moreover, NTP argued that “the
20 transformation of data can produce a tangible result, that [defendant] RIM transforms data by
21 moving email through the network, and that the tangible result of the transformation is a product
22 under section 271(g).” Id. NTP added that RIM “manufactures” email into its tangible structure and
23 “imports” email using NTP’s patented processes. Id.

24 The Federal Circuit held in NTP that “the district court erred in not holding as a matter of
25 law that section 217(g) was inapplicable to the asserted method claims,” Id. at 1324, which were
26 “directed to methods for the transmission of information in the form of email messages.” Id. at
27 1323. The Federal Circuit reasoned that “[b]ecause the ‘transmission of information,’ like the
28

1 'production of information' [at issue in Bayer], [did] not entail the manufacturing of a physical
2 product, section 271(g) [did] not apply to the asserted method claims." Id. The court further
3 explained that in Bayer, there was no doubt that a process producing research data was patentable
4 under section 101. Id. at 1324; 35 U.S.C. § 101 ("Whoever invents or discovers any new and useful
5 process ... may obtain a patent therefor"). Nevertheless, sections 101 and 271(g) are not
6 coextensive in their scope. NTP, 418 F.3d at 1324. Although a process may be patentable under
7 section 101, section 271(g) does not cover every patentable process and its purported result. Id.
8 Thus, even though a process may be patentable under section 101 because it produces a tangible
9 result, the Federal Circuit rejected this "tangible result" test for section 271(g) in Bayer when it held
10 that research data—a "tangible result" for section 101 purposes—did not garner the protection of
11 section 271(g) because it was not a physical product.

12 In this case, the parties do not dispute that the catalog is "made by" the patented methods or
13 systems. Indeed, the claims describe a method or system for *creating* a product catalog. Unlike
14 Bayer, where the patented process was not used in the actual manufacture of the drug, the patented
15 process in this case is directly used to manufacture the catalog. In other words, while practicing
16 each step of the research method in Bayer did not lead to the creation of a drug, practicing each step
17 of the method in this case leads directly to the creation of a catalog. There is also no genuine issue
18 of material fact that by downloading and using the catalog for its own sales and marketing purposes,
19 Etilize "imports" and "uses" the catalog and may directly infringe under section 271(g). Likewise,
20 there is also no genuine issue of material fact that by inducing its customers to download and use the
21 catalog, Etilize may indirectly infringe under section 271(g).

22 The main issue for the court, then, is whether the catalog is a "product" within the meaning
23 of section 271(g). Defendant Etilize argues that the only product that is ever present and sold in the
24 United States is the SpeX subscription service allowing access to and transmission of the catalog
25 information. Characterizing the relevant product in this case as "access to information," defendant
26 Etilize argues that like the "production of information" in Bayer and the "transmission of
27 information" in NTP, the SpeX subscription service is not a "product" within the meaning of section
28

1 271(g). This, however, is not an accurate characterization of the facts and simply confuses the
2 relevant legal issue. First, the relevant object for the court’s analysis is the object made by the
3 patented process—the catalog, not the subscription service. Second, the catalog, i.e. the data file, is
4 in fact an object that is present in the United States because the file is downloaded onto the local
5 hard drives of computers owned by customers in the United States. Not only is the catalog present
6 in the United States, but as required under section 271(g), it is imported and sold in this country by
7 Etilize and is also used by Etilize’s customers in the United States. Despite Etilize’s attempts to
8 confuse the issue, the relevant question for the court is not whether *SpeX*—the subscription
9 service—is a physical good, but whether the *catalog* is a physical good and therefore a “product”
10 within the meaning of section 271(g).

11 CNET argues that the Supreme Court’s recent opinion in Microsoft v. AT&T, 127 S.Ct. 1746
12 (2007), although not directly on point, is instructive for the issue of whether an electronic product
13 catalog is a physical good. In Microsoft, the issue before the court was whether software is a
14 combinable “component” for purposes of section 271(f). Id. at 1755. The court stated that software
15 “abstracted from a tangible copy” is simply abstract information. Id. Only when expressed and
16 stored as machine-readable object code, e.g. burned on a CD-ROM or written to a server hard drive
17 such that it is capable of being downloaded from the internet, does software become an actual,
18 physical component amenable to combination. Id. at 1756. The court held that “a copy of Windows
19 [software], not Windows in the abstract, qualifies as a ‘component’ under § 271(f).” Id.

20 This court agrees with CNET that Microsoft is instructive for the concept that an electronic
21 catalog, like computer software, is not simply an intangible collection of information, but can also
22 be thought of as having a physical, tangible embodiment once it is expressed and stored on computer
23 readable media in the form of magnetic fields on a hard drive or etchings on a CD-ROM. The
24 catalog in this case, therefore, is distinguishable from the abstract information at issue in Bayer. The
25 claims in this case are directed toward *creation* of a product catalog *stored on computer readable*
26 *media*, not the identification of whether a particular substance inhibits or does not inhibit a particular
27 protein. In other words, the electronic catalog in this case, far from being abstract information or
28

1 knowledge, is a physical article no different from a product catalog manufactured and assembled on
2 paper bound with stitching, glue or staples. The court holds that the catalog is a “product” within
3 the meaning of section 271(g) which is “made by” CNET’s patented processes and is “imported”
4 and “used” in the United States by Etilize and Etilize’s customers. Accordingly, the court denies
5 Etilize’s motion for summary judgment of non-infringement under section 271(g).

6 For several reasons, NTP is distinguishable from this case and does not disturb the court’s
7 conclusion. The Federal Circuit’s holding in NTP was a general proposition that section 271(g) was
8 “inapplicable” to the asserted method claims. The Circuit found that the claims were directed to the
9 “transmission of information in the form of email messages” and that the transmission of
10 information did not entail the manufacture of a physical product. The Circuit, however, did not
11 specify whether its holding was based on the fact that transmission did not involve manufacturing or
12 whether electronic mail was not a physical good. Moreover, although the district court found that
13 electronic mail *was* a physical good, the Circuit did not specifically reverse or affirm the district
14 court’s holding. Instead, the Circuit stated that the district court erred in general by not holding that
15 section 271(g) was “inapplicable.”

16 To the extent that the Circuit’s holding was based on the fact that the claims in NTP were
17 directed to the transmission of email messages, NTP is distinguishable because the claims in this
18 case are directed to the *creation and manufacture* of a catalog, not to its *transmission or delivery*.
19 To the extent that the Circuit’s holding was based on the fact that the email messages in NTP,
20 though tangible, were nevertheless not physical products, this case is still distinguishable. While
21 email messages are not products that are bought and sold, a catalog—whether its physical form is
22 etchings on a CD-ROM, magnetic fields in a server, or ink on paper—is a product that is bought and
23 sold. When passing section 271(g), Congress was concerned about patented processes whose
24 commercial value is derived from the sale of the resulting product. Mitchell Dec., Exh. U, “Process
25 Patents: Hearing Before the Subcomm. on Patents, Copyrights and Trademarks of the S. Comm. on
26 the Judiciary,” 99th Congress at 11 (1985) (“When the chief commercial value of the process comes
27 from the use or sale of the resulting product, sale of the foreign-made products may effectively
28

1 destroy the value of the U.S. process patent and perhaps the patent holder's ability to recover an
2 initial R&D investment."). While Congress may not have intended for section 271(g) to protect
3 email that is not bought and sold, Congress did intend for section 271(g) to protect a product catalog
4 that is bought and sold. The value of CNET's process lies in the method by which a product catalog
5 is created, and that value is captured by the sale of the catalog.

6
7 CONCLUSION

8 Defendant's motion for summary judgment of non-infringement under section 271(a) is
9 GRANTED. Defendant's motion for summary judgment of non-infringement under section 271(g)
10 is DENIED.

11
12 IT IS SO ORDERED.

13
14 Dated: November 26, 2007



MARILYN HALL PATEL
Judge
United States District Court
Northern District of California

ENDNOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Subsets of the catalog, some of which are used by Etilize’s customers and some of which are used by Etilize itself for marketing and demonstration purposes, are currently located on various U.S.-based servers.

2. CNET argues that Etilize and Etilize-Pakistan are not separate entities and that Etilize-Pakistan is in fact an overseas branch of Etilize which is incorporated in the United States. This argument, however, does not disturb the court’s analysis. Even assuming that Etilize and Etilize-Pakistan are one and the same, the location of the *entity’s incorporation*, which may be in the United States, does not change the fact that the location of the *infringing activity* is still Pakistan.