

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

INTELLIGENT AGENCY, LLC,

Plaintiff,

v.

7-ELEVEN, INC.,

Defendant.

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Civil Action No. 4:20-cv-00185-ALM

Jury Trial Demanded

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

INTELLIGENT AGENCY, LLC,

Plaintiff,

v.

NEIGHBORFAVOR, INC.,

Defendant.

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Civil Action No. 1:20-cv-0777-ADA

Jury Trial Demanded

**PLAINTIFF INTELLIGENT AGENCY, LLC'S
CLAIM CONSTRUCTION OPENING BRIEF**

Steven E. Ross
Texas Bar No. 17305500
ROSS IP GROUP PLLC
5050 Quorum Drive, Suite 700
Dallas, Texas 75254
Phone: 972-661-9400
Facsimile: 972-661-9401
Email: sross@rossipg.com

Kenneth Thomas Emanuelson
Texas Bar No. 24012591
THE EMANUELSON FIRM, P.C.
17304 Preston Road, Suite 800
Dallas, Texas 75252
Phone: 469-363-5808
Email: ken@emanuelson.us

Attorneys for Plaintiff

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1.0 INTRODUCTION

Plaintiff Intelligent Agency, LLC (“IA”) respectfully submits this opening brief on claim construction. Plaintiff IA brought suit against Defendant 7-Eleven, Inc. (“SEI”) in the Eastern District of Texas and against Defendant Neighborfavor, Inc. (“Favor”) in the Western District of Texas for alleged infringement of U.S. Patent No. 9,286,610 (“the ‘610 patent”) and U.S. Patent No. 9,894,476 (“the ‘476 Patent”). Because the same claims of the two patents are being asserted against each defendant, the Courts granted the parties’ joint request for coordinated claim construction proceedings.¹

The parties submitted their Joint Claim Construction and Prehearing Statement (“JCCPS”) on April 23, 2021. Exhibit A to the JCCPS is a list of the constructions on which the parties have agreed.² Exhibit B to the JCCPS is a table entitled “Master Claim Construction Chart,” which lists each of the disputed claim terms and the parties’ respective, proposed constructions for those terms.³ As of the filing of the JCCPS, the constructions of 32 claim terms were disputed between the parties. Of those 32 claim terms, 1 was proposed for construction by Plaintiff IA, 9 were proposed for construction by Plaintiff IA and Defendants, and the remaining 22 were proposed for construction by Defendants.⁴

Each disputed claim term listed in the Master Claim Construction Chart has been assigned an identification number (*e.g.*, “Term No. 1”) for purposes of convenient reference.⁵ Because the

¹ Agreed Scheduling Order for Coordinated Claim Construction Proceedings (Dkt. #46) in Case No. 4:20-cv-00185-ALM (E.D. Tex.); Agreed Scheduling Order for Coordinated Claim Construction Proceedings (Dkt. #47) in Case No. 1:20-cv-0777-ADA (W.D. Tex.).

² JCCPS, Ex. A, (Dkt. #49-1, E.D. Tex.) (Dkt. #49-1, W.D. Tex.).

³ JCCPS, Ex. B, (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.).

⁴ *Id.* As discussed later in this brief, Plaintiff IA has agreed to a few of Defendants’ proposals.

⁵ *Id.*

disputed terms are so numerous, and because some terms are particularly lengthy, the disputed terms are often referred to by identification number in the following portions of this brief.

2.0 THE ASSERTED PATENTS

Federico Fraccaroli is the inventor of the patents-in-suit. He was born in Italy, where he earned degrees in Physics, Economics, and Naval Sciences. He served for twelve years as an officer in the Italian Navy participating in, among other conflicts, the Gulf War and operations in the former Yugoslavia operations under the UN, EU, and NATO control. After leaving military service, while working for a multinational corporation, he obtained law degrees from Texas Wesleyan University (now Texas A&M School of Law) and SMU and became a patent attorney. As an entrepreneur and innovator, his work has been recognized internationally.⁶ He is a dual citizen of Italy and the United States.

2.1 The ‘610 Patent

The ‘610 Patent, attached as Exhibit A, is titled “Method and Apparatus for a Principal/Agent Based Mobile Commerce.” It issued on March 15, 2016 from an application that was filed on July 4, 2012.⁷ The patent is generally directed to methods, apparatuses and computer software systems for effectuating commercial transactions between principals, agents and users through the use of software applications installed on mobile devices. Claims 1, 2, 5, 6, 8, 10, 15-17, and 20 of the ‘610 Patent are asserted against the Defendants in this action. The asserted independent claims of the ‘610 Patent with the disputed claim terms shown in bold and italicized for emphasis are set out in Exhibit B hereto.

⁶ See Second Amended Complaint (Dkt. #12, W.D. Tex.) at ¶¶ 7-9.

⁷ Since the application for the ‘610 Patent was filed before September 16, 2012, the ‘610 Patent is a pre-AIA patent.

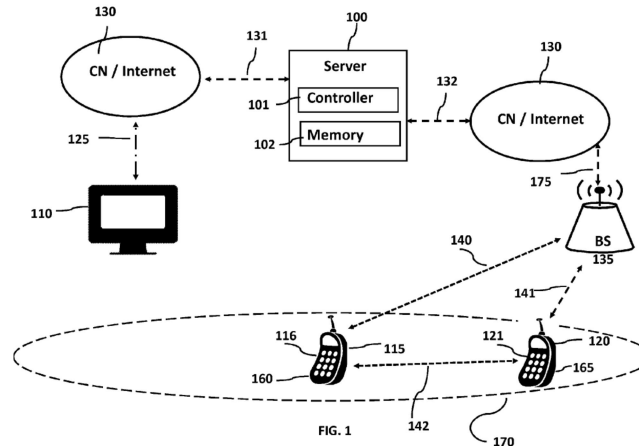


Figure 1 of the ‘610 Patent is shown above. The methods, apparatuses and systems of the ‘610 Patent are designed to efficiently facilitate transactions using specialized software applications running on mobile devices carried by agents and customers.⁸ One or more algorithms, identified as “agent-user matching algorithms,” are employed to match customers desiring goods and services to appropriate agents meeting at least one location-based criterion.⁹ A location-based criterion may include, for example, contemporaneous presence within a predefined area.¹⁰ The system applies one or more participation conditions, controlled by a principal, to selectively enable agents to participate.¹¹

2.2 The ‘476 Patent

The ‘476 Patent, attached as Exhibit C, is titled “Method, System, and Apparatus for Location-based Machine-assisted Interactions” and issued on February 13, 2018 from an application that claims priority to October 2, 2013.¹² The ‘476 Patent is generally directed to

⁸ See, e.g., ‘610 Patent, Fig. 1; col. 3, lines 9-25; claims 1, 6, 8, 10 and 17.

⁹ See, e.g., ‘610 Patent, Figs. 5 and 6; col. 6, lines 45-53; col. 11, lines 27-40; claims 1, 6, 8, 10 and 17.

¹⁰ See, e.g., ‘610 Patent, Fig. 7; col. 12, lines 8-25; claim 2.

¹¹ See, e.g., ‘610 Patent, Fig. 2; col. 13, lines 18-35; claims 1, 6, 10 and 17.

¹² Because the application for the ‘476 Patent was filed after September 16, 2012, the ‘476 Patent is an AIA patent.

methods, apparatuses and computer software systems for, *inter alia*, facilitating business transactions between agents and customers located within the same geographic area. Claims 1, 2, 4, 6, 8, 9, 12, and 13 of the '476 Patent are asserted against the Defendants in this action. The independent claims of the '476 Patent, with the disputed claim terms shown in bold and italicized for emphasis, are set out in Exhibit D hereto.

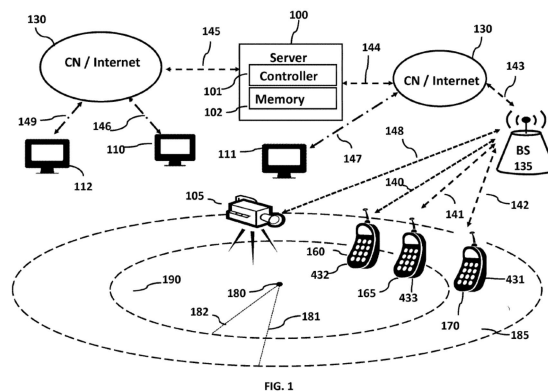


Figure 1 of the '476 Patent is shown above. The functionality of the methods, apparatuses and computer software systems of the '476 Patent operate in connection with defined geographical areas identified in the disclosure as “session areas.”¹³ According to the disclosure and claims of the '476 Patent, sets of users are associated with various session areas based, at least in part, on the geographic locations of the mobile devices of those users.¹⁴ Users among a first set of users (e.g., customers interested in a good or service) and a second set of users (e.g., agents providing a good or service) may both be associated with a particular session area based on the geographic location of their mobile devices.¹⁵

¹³ See, e.g., '476 Patent, Fig. 1, element 190; col. 3, line 52 – col. 4, line 3; claims 1, 9 and 15.

¹⁴ See, e.g., '476 Patent, col. 4, lines 20-25; claims 1, 9 and 15.

¹⁵ See, e.g., '476 Patent, Fig. 1, elements 160 and 170; col. 4, lines 20-25; claims 1, 9 and 15.

Association of agents with customers within a session area is facilitated by a computer network or server connected to the mobile devices via a wireless network.¹⁶ When a customer requests, or expresses interest in, goods or services via the software application running on his or her mobile device, one or more appropriate agents may be identified based at least in part on the locations of the mobile devices of those agents.¹⁷ When a particular agent is identified, visual indicia identifying the agent is presented to the customer.¹⁸ The system may provide guidance indicia to one or both users in order to facilitate the presentation of goods or services to the customer. Together, these elements facilitate a system by which goods and services of a principal may be efficiently provided to customers using a decentralized network of mobile agents running specialized applications on their mobile devices.

3.0 LEGAL STANDARDS

The present Courts are regularly involved in patent claim construction, so Plaintiff IA's discussion of the applicable legal standards is relatively brief and is not meant to be an exhaustive treatment of the applicable law.

3.1 General Standards

The general rule is that claim terms should be given their plain and ordinary meaning.¹⁹ There are “only two exceptions to [the] general rule” that claim terms are construed according to their plain and ordinary meaning: “(1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of the claim term either in the

¹⁶ See, e.g., ‘476 Patent, Fig. 1, element 100; col. 4, lines 50-63; claims 1, 9 and 15.

¹⁷ See, e.g., ‘476 Patent, col. 4, lines 20-25; claims 1, 9 and 15.

¹⁸ See, e.g., ‘476 Patent, col. 4, lines 20-25; claims 1, 9 and 15.

¹⁹ See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2015) (en banc).

specification or during prosecution.”²⁰ The standards for finding lexicography or disavowal are “exacting.”²¹

To act as his own lexicographer, the patentee must “clearly set forth a definition of the disputed claim term,” and “clearly express an intent to define the term.”²² The patentee’s lexicography must appear “with reasonable clarity, deliberateness, and precision.”²³

To disavow or disclaim the full scope of a claim term, the patentee’s statements in the specification or prosecution history must amount to a “clear and unmistakable” surrender.²⁴ “Where an applicant’s statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable.”²⁵

3.2 Markush Groups

The parties have agreed that certain terms of the asserted claims recite Markush groups.²⁶ “A Markush group is a listing of specified alternatives of a group in a patent claim, typically expressed in the form: a member selected from the group consisting of A, B, and C.”²⁷ The parties

²⁰ *Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1365 (Fed. Cir. 2014) (quoting *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012)); *see also GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014) (“[T]he specification and prosecution history only compel departure from the plain meaning in two instances: lexicography and disavowal.”).

²¹ *GE Lighting Solutions*, 750 F.3d at 1309.

²² *Id.* (quoting *Thorner*, 669 F.3d at 1365); *see also Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998).

²³ *Renishaw*, 158 F.3d at 1249.

²⁴ *See Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1329 (Fed. Cir. 2009); *see also Thorner*, 669 F.3d at 1366 (“The patentee may demonstrate intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.”).

²⁵ *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013).

²⁶ JCCPS, Ex. A (Dkt. #49-1, E.D. Tex.) (Dkt. #49-1, W.D. Tex.).

²⁷ *Abbott Labs. v. Baxter Pharm. Prods., Inc.*, 334 F.3d 1274, 1280 (Fed. Cir. 2003) (citing Robert C. Farber, *Landis on Mechanics of Patent Claim Drafting*, § 50, 5A, VI-5-6 (4th ed. 2002) (“A Markush group is a sort of homemade generic expression covering a group of two or more

have further agreed that the particular Markush groups at issue here are closed.²⁸ However, the overall claims that contain the Markush groups remain open because they recite the transition phrase “comprising.” The Federal Circuit recently addressed this issue:

In short, this case involves a claim that uses a “comprising” transition phrase and one of the following limitations requires a component that “consists of” items listed in a Markush group and that meets the limitation’s requirements for the component. Without more, such language is satisfied when an accused product contains a component that is from the Markush group and that meets the limitation’s requirements for the component. It does not forbid infringement of the claim if an additional component is present functionally similar to the component identified in the Markush group limitation, unless there is further basis in the claim language or other intrinsic evidence for precluding the presence of such additional components. There is no such basis here.²⁹

As discussed below, Defendants contend some of the claim terms that include Markush groups should also be construed pursuant to 35 U.S.C. § 112, ¶ 6.

3.3 Means-Plus-Function and Step-Plus-Function Claim Format

A patent claim may be expressed using functional language.³⁰ Section 112, paragraph 6 of the patent statute provides that a structure may be claimed as a “means . . . for performing a specified function” and that an act may be claimed as a “step for performing a specified function.”³¹ There is a rebuttable presumption that § 112, ¶ 6 applies when the claim language recites the terms “means” or “step for,” and there is a rebuttable presumption that § 112, ¶ 6 does not apply in the absence of those terms.³² When a claim term does not recite “means,” the

different materials (elements, radicals, compounds, *etc.*) mechanical elements, or process steps, any one of which would work in the combination claimed.”)).

²⁸ JCCPS, Ex. A (Dkt. #49-1, E.D. Tex.) (Dkt. #49-1, W.D. Tex.).

²⁹ *Amgen Inc. v. Amneal Pharms. LLC*, 945 F.3d 1368, 1379 (Fed. Cir. 2020). Here, it should be noted that in addition to reciting the open-ended “comprising” transition, the phrase “at least” immediately precedes the “agent-user matching algorithm” that contains the Markush group.

³⁰ See 35 U.S.C. § 112, ¶ 6; *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347-49 (Fed. Cir. 2015) (en banc in relevant part); *Masco Corp. v. United States*, 303 F.3d 1316, 1326 (Fed. Cir. 2002).

³¹ *Id.*

³² See *Williamson*, 792 F.3d at 1348; *Masco*, 303 F.3d at 1326.

presumption can be overcome and § 112, ¶ 6 will apply if the challenger demonstrates that the claim term fails to “recite[] sufficiently definite structure” or else recites “function without reciting sufficient structure for performing that function.”³³

3.4 Claim Definiteness

Patent claims must particularly point out and distinctly claim the subject matter regarded as the invention.³⁴ The Supreme Court interprets this standard to mean that, when viewed in light of the intrinsic evidence, the claim must “inform those skilled in the art about the scope of the invention with reasonable certainty.”³⁵ Because it is a challenge to validity, the failure of any asserted claim to comply with 35 U.S.C. § 112, ¶ 2 must be shown by clear and convincing evidence.³⁶

4.0 CONSTRUCTION OF THE DISPUTED TERMS OF THE ‘610 PATENT

4.1 Term No. 1:³⁷ Whether the preambles of claims 1, 6, 8, and 10 are limiting

Defendants contend the preambles of claims 1, 6, 8, and 10 of the ‘610 Patent are limiting. Upon further consideration after submission of the JCCPS, Plaintiff IA agrees that the preamble of claim 1 and the following underlined portions of the preamble of claim 10 are limiting:

Claim 10: “A computer software system having a set of instructions stored in a non-transitory computer-readable medium for controlling at least one general-purpose digital computer in performing desired functions that are necessary to execute a machine implemented method for facilitating a prospective business transaction involving a principal, an agent, and a user, said set of instructions comprising instructions formed into a plurality of modules, said plurality of modules comprising:”

³³ *Id.* at 1348 (quoting *Watts v. XL Sys., Inc.*, 232 F.3d 877, 880 (Fed. Cir. 2000)).

³⁴ 35 U.S.C. § 112, ¶ 2.

³⁵ *Nautilus Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014).

³⁶ *Id.* at 912.

³⁷ The term numbers correspond to the numbers listed in the left most column of the parties’ Master Claim Construction Chart. JCCPS, Ex. B, (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.).

Plaintiff IA, however, disagrees with Defendants' contention that the preambles of claims 6 and 8 of the '610 Patent are limiting. Preambles generally do not limit claims.³⁸ A preamble may be construed as limiting, however, "if it recites essential structure or steps, or if it is 'necessary to give life, meaning, and vitality' to the claim."³⁹ "Conversely, a preamble is not limiting 'where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention.'"⁴⁰ Even if a portion of a preamble is determined to be limiting, that "does not necessarily convert the entire preamble into a limitation, particularly one that only states the intended use of the invention."⁴¹

The preambles of claim 6 ("Mobile equipment comprising") and claim 8 ("Apparatus comprising") are very short and merely provide general, introductory context for the claims. They do not recite essential structure or steps or breath life, meaning, or vitality into the claims. While the phrase "said mobile equipment" is recited in the body of claim 6, the body of that claim itself sets forth a structurally complete invention. Further, the term "apparatus" does not appear at all in the body of claim 8. The patentee has not "use[d] both the preamble and the body to define the subject matter of the claimed invention" of claims 6 and 8.⁴² The non-underlined portion of the preamble of claim 10 (see above) is not limiting because it merely states a purpose or intended use for the invention, which is fully defined in the reminder of the claim.⁴³

³⁸ *Am. Med. Sys. Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1358 (Fed. Cir. 2010).

³⁹ *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (quoting *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999)).

⁴⁰ *Catalina Mktg.*, 289 F.3d at 808 (quoting *Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997)).

⁴¹ *TomTom, Inc. v. Adolph*, 790 F.3d 1315, 1323 (Fed. Cir. 2015).

⁴² *Bell Commc'ns Research, Inc. v. Vitalink Commc'ns Corp.*, 55 F.3d 615, 620 (Fed. Cir. 1995).

⁴³ *Catalina Mktg.*, 289 F.3d at 808 (quoting *Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997)).

4.2 Term No. 2: “principal”

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning.	“an entity that enables or disables agent IDs and allows or disallows the participation of those agent IDs”

The term “principal” appears in asserted claims 1, 2, 6, 8, 10, and 17, has a commonly understood meaning, and its construction “involves little more than the application of the widely accepted meaning of commonly understood words.”⁴⁴ There is no clear lexicography or disavowal regarding this term. Defendants’ construction seeks to engraft additional limiting language from elsewhere in the claims⁴⁵ onto the plain and ordinary meaning of the word “principal.” Restricting the plain and ordinary meaning in that way would be contrary to the Federal Circuit’s *en banc* decision in *Phillips*.⁴⁶

4.3 Term No. 3: “agent”

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning	“person or people representing a principal whose proxies are agent IDs”

The term “agent” similarly has a commonly understood meaning, and its construction “involves little more than the application of the widely accepted meaning of commonly understood words.”⁴⁷ Other language in the claims expressly states that “second mobile equipment” is

⁴⁴ *Phillips*, 415 F.3d at 1314; *see also* ‘610 Patent at 1:12-19 (discussing “principal” in accordance with plain and ordinary meaning).

⁴⁵ For example, claims 1, 6, 8, and 10 expressly recite “said principal-controlled participation condition selectably enables said second mobile equipment, associated with said agent digital identifier, to participate to said machine implemented method.”

⁴⁶ *Phillips*, 415 F.3d at 1314 (observing that recitation of “steel baffles” in the claim “strongly implies that the term ‘baffles’ does not inherently mean objects made of steel.”); *see also id.* at 1325 (refusing to import other claim limitations into the plain meaning of “baffles”).

⁴⁷ *Phillips*, 415 F.3d at 1314; *see also* ‘610 Patent at 1:12-19 (discussing “agent” in accordance with plain and ordinary meaning).

“associated with an agent digital identifier.”⁴⁸ This is merely another instance of Defendants improperly attempting to engraft other claim limitations onto the plain meaning of “agent.”⁴⁹

4.4 Term No. 4: “agent-user matching algorithm using predefined data selected from the group consisting of: . . . and combinations thereof”⁵⁰

Plaintiff’s Construction	Defendants’ Construction
Not governed by Section 112(6)	Governed by Section 112(6). Indefinite for lack of corresponding structure.

This term appears in asserted claims 1, 6, 8, and 17, and a slightly modified version appears in claim 10. Defendants contend these are means-plus-function terms governed by 35 U.S.C. § 112, ¶ 6.⁵¹ None of these terms recite the word “means,” so there is a rebuttable presumption that § 112, ¶ 6 does not apply. To overcome the presumption, Defendants must show that the claim term at issue fails to “recite[] sufficiently definite structure” or else recites “function without reciting sufficient structure for performing that function.”⁵² Plaintiff IA reserves its arguments for its reply brief, after Defendants have explained their position on these issues.

⁴⁸ See, e.g., ‘610 Patent at 14:32-33.

⁴⁹ *Phillips*, 415 F.3d at 1314 (observing that recitation of “steel baffles” in the claim “strongly implies that the term ‘baffles’ does not inherently mean objects made of steel.”); see also *id.* at 1325 (refusing to import other claim limitations into the plain meaning of “baffles”).

⁵⁰ The parties have agreed this term includes a closed Markush group, and they have agreed on the construction of that closed Markush group. Defendants contend the term should additionally be construed as means-plus-function term under § 112, ¶ 6. JCCPS, Ex. B (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.) at 2-3 (alleging absence of “corresponding structure”). Plaintiff IA contends the terms should not be governed by § 112, ¶ 6,

⁵¹ Defendants overlook the fact that claim 1 is a method claim, and claim 10 is a Beauregard claim, which should be treated as a method claim. *Digital-Vending Servs. Int’l, LLC v. Univ. Of Phoenix, Inc.*, 672 F.3d 1270, 1276 n.1 (Fed. Cir. 2012) (stating that Beauregard claims “should be treated as method claims to avoid ‘exalt[ing] form over substance’” (quoting *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1374 (Fed. Cir. 2011))). Defendants have not asserted that any of the disputed terms are step-plus-function terms.

⁵² *Williamson*, 792 F.3d at 1348.

4.5 Term No. 5: “principal-controlled participation condition”

Plaintiff’s Construction	Defendants’ Construction
“a changeable parameter that is controlled by the principal and signifies the agent’s eligibility for participation in the business transaction”	Plain and ordinary meaning.

Plaintiff IA initially believed that the jury would benefit from an express construction of the term “principal-controlled participation condition,” which appears in asserted claims 1, 6, 8, 10, 17, and 20 of the ‘610 Patent. However, to reduce the number of disputed issues, Plaintiff IA is willing to agree this term can be given its plain and ordinary meaning.

4.6 Term No. 6: “selectably enables”

Plaintiff’s Construction	Defendants’ Construction
“permits the eligible agent to participate”	Indefinite.

The “selectably enables” term appears in asserted claims 1, 6, 8, 10, and 17. Defendants apparently contend a person of ordinary skill in the art would not be able to understand the meaning of this term with reasonable certainty and that the term is therefore indefinite. The plain language of the claims, however, provides more than enough context to determine the meaning of “selectably enables.” Claim 1, for example, recites:

a principal-controlled participation condition associated with said agent digital identifier wherein *said principal-controlled participation condition selectably enables* said second mobile equipment, associated with said agent digital identifier, *to participate to said machine implemented method*.⁵³

Thus, the “selectably enables” term appears in a “wherein” clause that makes it clear that it is the “principal-controlled participation condition” that “selectably enables” the participation in the machine implemented method. As noted above with respect to Term No. 5, Defendants agree that “principal-controlled participation condition” should be given its plain and ordinary meaning. The

⁵³ ‘610 Patent at 14:57-62 (emphasis added).

“wherein” clause merely provides context by reciting an act performed by the admittedly definite “principal-controlled participation condition” term; namely, it “selectably enables” the “second mobile equipment” to “participate” in the “machine implemented method.” The term is not indefinite.⁵⁴

4.7 Term No. 7: “an indicator configured to provide an indication that said mobile equipment, associated with a user digital identifier, and a second mobile equipment, associated with an agent digital identifier, meet a location based criterion, wherein said location based criterion facilitates a prospective business transaction involving a principal, an agent, and a user and said indication is regulated by at least: an agent-user matching algorithm using predefined data selected from the group consisting of: . . . and combinations thereof”⁵⁵

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning. Not governed by Section 112(6).	Governed by Section 112(6). Indefinite for lack of corresponding structure.

This lengthy term was proposed for construction by Defendants and spans the majority of claim 6. The term does not recite the word “means,” so there is a rebuttable presumption that § 112, ¶ 6 does not apply. To overcome the presumption, Defendants must show that the claim term at issue fails to “recite[] sufficiently definite structure” or else recites “function without reciting sufficient structure for performing that function.”⁵⁶

Here, the word “indicator” provides sufficiently definite structure. The fact that a particular component takes its name from the function it performs is not sufficient to convert a claim term reciting that component into a means-plus-function term.⁵⁷ “Many devices take their names from

⁵⁴ Defendants have no trouble interpreting the phrase “selectively enabling” in the ‘476 Patent. JCCPS at Ex. B, Term No. 25, (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.). Defendants say that term should be given its plain and ordinary meaning.

⁵⁵ The parties have agreed this term includes a closed Markush group, and they have agreed on the construction of that closed Markush group. Defendants contend the term should additionally be construed as means-plus-function terms under § 112, ¶ 6. JCCPS, Ex. B (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.).

⁵⁶ *Williamson*, 792 F.3d at 1348.

⁵⁷ *See Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580, 1583 (Fed. Cir. 1996).

the functions they perform. The examples are innumerable, such as ‘filter,’ ‘brake,’ ‘clamp,’ ‘screwdriver,’ or ‘lock.’”⁵⁸ The term “indicator” is no different. It has a sufficiently definite structural meaning to avoid application of § 112, ¶ 6.

Moreover, the context of the claim confirms the structural nature of the claimed “indicator.” The claim specifies the objectives and operation of the “indicator” by stating that it operates in conjunction with “said mobile equipment” and “second mobile equipment” to “provide an indication” that they meet a “location based criterion.” The claim additionally specifies how the “indicator” operates to provide the indication. Specifically, the claim states (emphasis added) that “said indication is *regulated* by at least: an agent-user matching algorithm using predefined data selected from the group consisting of . . . ; and a principal-controlled participation condition associated with said agent digital identifier” This additional context confirms the structural nature of the claimed “indicator” and is clearly sufficient to sustain the presumption against § 112, ¶ 6.⁵⁹

4.8 Term No. 8: “said machine implemented method”

Plaintiff’s Construction	Defendants’ Construction
“a method implemented by a machine”	Indefinite

This term appears at the end of claim 6. Plaintiff IA believes Defendants contend this term is indefinite for lack of antecedent basis. Defendants bear the burden of proving indefiniteness by clear and convincing evidence, and must show that, in light of the intrinsic evidence, the claim fails to “inform those skilled in the art about the scope of the invention with reasonable

⁵⁸ *Id.*

⁵⁹ *See Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1008 (Fed. Cir. 2018); *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1288-1301 (Fed. Cir. 2014), *overruled on other grounds by Williamson*, 792 F.3d at 1349; *Linear Tech. corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1319-20 (Fed. Cir. 2004) (“circuit [for performing a function]” found to be sufficiently definite structure because the claim recited its objectives and operations).

certainty.”⁶⁰ Plaintiff IA reserves its arguments until after Defendants have explained their position.

4.9 Term Nos. 9-12: The “process for” phrases of the ‘610 Patent

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning. Not governed by Section 112(6).	Governed by Section 112(6). Indefinite for lack of corresponding structure.

Term Nos. 9-12, which each recite a “process for,” appear in independent claim 10 and dependent claims 15 and 16, which both depend from claim 10.⁶¹ Defendants contend these are means-plus-function terms that render claims 10, 15, and 16 invalid for alleged lack of corresponding structure. The claim terms do not recite “means” language, so § 112, ¶ 6 presumptively does not apply. To overcome the presumption, Defendants must show that the claim term at issue fails to “recite[] sufficiently definite structure” or else recites “function without reciting sufficient structure for performing that function.”⁶²

Claims 10, 15, and 16 are Beauregard claims⁶³ directed to computer-implemented inventions. They recite more than enough structure to avoid application of § 112, ¶ 6. The preamble of claim 10 recites (emphasis added): “A computer software system having a *set of instructions* stored in a *non-transitory computer-readable medium . . .*” The plain language of the claims makes it clear that disputed Term Nos. 9-12 describe the specific processes carried out by the “set of instructions” that are stored in the “non-transitory computer-readable medium.” The

⁶⁰ *Nautilus*, 572 U.S. at 910 and 912 (2014).

⁶¹ JCCPS, Ex. B, (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.). Defendants have not asserted that any of the disputed terms are step-plus-function terms.

⁶² *Williamson*, 792 F.3d at 1348.

⁶³ See *In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995). Claim 10, and thus dependent claims 15 and 16, are Beauregard claims, which should be treated as method claims. *Digital-Vending Servs.*, 672 F.3d at 1276 n.1 (Fed. Cir. 2012) (stating that Beauregard claims “should be treated as method claims to avoid ‘exalt[ing] form over substance’” (quoting *CyberSource*, 654 F.3d at 1374 (Fed. Cir. 2011))).

Federal Circuit has held that recitation of traditional, physical structure is not necessary to avoid application of § 112, ¶ 6 in the context of computer-implemented inventions:

“Structure” to a person of ordinary skill in the art of computer-implemented inventions may differ from more traditional, mechanical structure. For example, looking for traditional “physical structure” in a computer software claim is fruitless because software does not contain physical structures. Indeed, the typical physical structure that implements software, a computer, cannot be relied upon to provide sufficiently definite structure for a software term lacking “means.” ***Rather, to one of skill in the art, the “structure” of computer software is understood through, for example, an outline of an algorithm, a flowchart, or a specific set of instructions or rules.*** . . . Requiring traditional physical structure in software limitations lacking the term means would result in all of these limitations being construed as means-plus-function limitations and subsequently being found indefinite.⁶⁴

Thus, in specific the context of Beauregard claims, which are inherently computer-implemented, courts have regularly held that recitation of a “computer-readable medium” is sufficiently definite structure to avoid application of § 112, ¶ 6.⁶⁵

4.10 Term No. 13: “means for storing in at least one non-transitory computer-readable medium, computer code adapted to facilitate, at least in part, a machine implemented method advancing a prospective business transaction involving a principal, an agent, and a user”

Plaintiff’s Construction	Defendants’ Construction
Governed by Section 112(6). Not indefinite.	Governed by Section 112(6). Indefinite for lack of corresponding structure.

⁶⁴ *Apple*, 757 F.3d at 1298-99 (emphasis added, citations omitted), *overruled on other grounds by Williamson*, 792 F.3d at 1349.

⁶⁵ See, e.g., *Uniloc 2017 LLC v. HTC America, Inc.*, No. C18-1732-RSM, 2020 WL 6270825, at *9 n.8 (W.D. Wash. Oct. 26, 2020) (construing Beauregard claims and observing that “numerous courts have concluded that claim terms such as ‘computer-readable medium,’ ‘computer readable storage medium,’ executable . . . code,’ ‘executable software’ and ‘computer software’ connote sufficient structure”); *Uniloc 2017 LLC v. Google LLC*, No. 2:18-cv-492-JRG-RSP, 2020 WL 569858, *14-15 (E.D. Tex. Feb. 5, 2020) (construing Beauregard claims and finding that the term “computer-readable medium” connotes sufficiently definite structure to avoid application of § 112, ¶ 6); *Kit Check, Inc. v. Health Care Logistics, Inc.*, No. 2:17-cv-1041, 2019 WL 4142719, at *11 (E.D. Ohio Aug. 30, 2019) (same).

This term appears in claim 17. The parties agree this is a means-plus-function term and that the recited function is “storing, in at least one non-transitory computer-readable medium, computer code adapted to facilitate, at least in part, a machine implemented method advancing a prospective business transaction involving a principal, an agent, and a user.”⁶⁶ Defendants contend the term is indefinite for alleged lack of corresponding structure. However, the ‘610 Patent describes ample corresponding structure, including Memory 102 in combination with Controller 101 of Server 100.

In another embodiment, said data structure may reside on Memory 102 of Server 100 and can be modified and updated directly by principal via Principal Equipment 110 or Agent Equipment 160 or, as discussed, by accessing secure web pages by using equipment capable to connecting to Core Network (CN)/Internet 130.⁶⁷

Alternative corresponding structures include (i) Memory 115 and Input/Output Module 116 of Agent Equipment 160, (ii) Memory 120 and Input/Output Module 121 of User Equipment 165, and (iii) Memory 430 and Processor 420 of mobile equipment 165 (Fig. 4).⁶⁸

4.11 Term No. 14: “means for causing the generation of indicia that a first mobile equipment, that is associated with a user digital identifier, and a second mobile equipment, that is associated with an agent digital identifier, meet a location based criterion, wherein said causing the generation of indicia is regulated by at least: an agent-user matching algorithm using predefined data selected from the group consisting of: . . . a principal-controlled participation condition . . . for advancing said business transaction”

Plaintiff’s Construction	Defendants’ Construction
Governed by Section 112(6). Not indefinite.	Governed by Section 112(6). Indefinite for lack of corresponding structure.

This lengthy term spans most of claim 17. The parties agree it is governed by § 112, ¶ 6, but they disagree as to the recited function. Defendants additionally contend the term is indefinite for alleged lack of corresponding structure. Plaintiff IA contends the recited function is “causing the generation of indicia that a first mobile equipment, that is associated with a user digital

⁶⁶ JCCPS, Ex. B (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.)

⁶⁷ ‘610 Patent at Fig. 1; 6:34-50; *see also*, 4:33-37, 8:41-46 and 13:65 – 14:8.

⁶⁸ ‘610 Patent at 3:14-25; 10:8-24.

identifier, and a second mobile equipment, that is associated with an agent digital identifier, meet a location based criterion.” The corresponding structure is Memory 102 in combination with Controller 101 of Server 100 programmed to carry out the algorithm of Figures 5 and 9, as described at column1, lines 20-51 and column 13, lines 5-17. Alternate corresponding structures include Memory 102 and Controller 101 of Server 100 programed to carry out (i) the algorithm of Figures 7 and 9, as described at column 12, lines 8-37 and column 13, lines 5-17; (ii) the algorithm of Figures 8 and 9, as described at column 12, line 38 to column 13, line 4 and column 13, lines 5-17.

4.12 Term No. 15: “said causing the generation of indicia is additionally regulated by program code, stored on said one non-transitory computer-readable medium, that is adapted to enable a prioritization scheme among agent digital identifiers, wherein said agent digital identifier is one of a plurality of agent digital identifiers that meet said principal-controlled participation condition.”

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning. Not governed by 112(6).	Governed by Section 112(6). Indefinite for lack of corresponding structure.

This term is essentially the entirety of dependent claim 20. Defendants contend it is a means-plus-function term and that the term is indefinite for alleged lack of corresponding structure. The term does not recite “means,” so § 112, ¶ 6 is presumed not to apply. Plaintiff IA reserves its arguments for its reply brief, after Defendants have explained their position on this term.

4.13 Term No. 16: “location based partition arrangement”

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning	Indefinite

This term appears in dependent claim 16, which depends from claim 10. Defendants contend the term is indefinite. Since Defendants bear the burden of proof to show indefiniteness

by clear and convincing evidence, Plaintiff IA reserves its arguments for its reply brief, after Defendants have explained their position on this term.

5.0 CONSTRUCTION OF THE DISPUTED TERMS OF THE ‘476 PATENT

5.1 Term No. 17: “session area”

Plaintiff’s Construction	Defendants’ Construction
“a defined area having at least one predetermined functionality associated therewith, the boundaries of which are electronically defined”	Indefinite

The term “session area” is used in asserted claims 1, 2, 4 and 9 of the ‘476 Patent, is referenced throughout the disclosure of the ‘476 Patent,⁶⁹ and is used consistently within the disclosure and claims of the ‘476 Patent. One embodiment of a “session area” is described in the disclosure of the ‘476 Patent as follows:

In FIG. 1 Session Area 190 is an area, also centered on Location 180 where certain predetermined functionalities are enabled. For example, User Equipment 160 and 165, by virtue of being positioned within Session Area 190 may interact, exchange electronic business cards, or close pre-determined business deals.⁷⁰

Certain predetermined functionalities that may be associated with a session area are further disclosed as follows:

The functionalities that can be provided to users within Session Area 190 can be multiple. As non-limiting examples, if Server 100 has received the information that User Equipment 165 is within Session Area 190, then Controller 101 may facilitate the browsing and the retrieving of user profiles associated with users who also are within said Session Area 190 such as User Equipment 160. It may also regulate the

⁶⁹ See, e.g., Figures 1, 2, 3, 8, 9, 13; Abstract of the ‘476 Patent; col. 2, lines 50-55; col. 3, lines 65-68; col. 4, lines 1-3; col. 4, lines 20-25; col. 6, lines 8-67; col. 7, lines 1-6; col. 8, lines 9-30; col. 8, lines 48-56; col. 8, lines 66-67; col. 9, lines 1-18; col. 9, lines 27-45; col. 10, lines 44-67; col. 11, lines 1-28; col. 11, lines 43-54; col. 12, lines 26-35; col. 13, lines 1-18; col. 13, lines 33-40; col. 22, lines 4-23; col. 24, lines 62-67; col. 25, lines 1-5; col. 25, lines 18-27; col. 25, lines 64-67; col. 31, lines 14-20.

⁷⁰ ‘476 Patent, col. 3, line 65- col. 4, line 3.

possibility of interacting via a messaging system or other predetermined interaction system such as an expression of interest notification.⁷¹

The written description of the ‘476 Patent associates a “session area” with a “geofence.” A “geofence” is defined as “a virtual perimeter for a real-world geographic area.”⁷² Accordingly, the term “session area,” as used consistently in the ‘476 Patent, can be understood as an electronically-defined area having at least one predetermined functionality associated with it.

Moreover, the claims themselves illuminate the meaning of “session area.” According to claims 1 and 9, for example, the “session area” (a) exhibits at least one set of spatial boundaries and (b) is associated with at least one time-related parameter defining at least one functionality connected with the session area.⁷³ Claim 1 further requires that the session area be anchored to at least one reference point.⁷⁴ “Session” and “area” are common words with well-understood meanings. The phrase “session area” appears numerous times throughout the ‘476 Patent, and in view of the detailed description provided in the ‘476 Patent, there is no reason to believe that a person skilled in the art would encounter difficulty understanding what is meant.⁷⁵ Accordingly, there is no basis for a finding that the term “session area” is indefinite.

5.2 Term No. 18: “authority”

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning	“an entity that via a networked machine can selectively enable and disable the association of agent’s mobile equipment to a roster of active mobile equipment apparatuses linked to agents”

⁷¹ ‘476 Patent, col. 6, lines 58-67.

⁷² ‘476 Patent, col. 1, lines 39-40.

⁷³ ‘476 Patent, claim 1, col. 32, lines 37-42; ‘476 Patent, claim 9, col. 34, lines 14-18.

⁷⁴ ‘476 Patent, claim 1, col. 32, lines 35-36.

⁷⁵ See Easttom Decl., p. 10, para. 20.

The word “authority” is used in asserted claims 1, 8 and 9 of the ‘476 Patent. The word “authority” has a well-understood meaning in the English language. There is nothing within the disclosure of the ‘476 Patent indicating that the word “authority” was used to convey any specialized meaning other than its plain and ordinary meaning. The word “authority” was used in the claims of the ‘476 Patent according to its plain and ordinary meaning. Because the intrinsic record does not contain any lexicography, disavowal, or disclaimer that justifies departing from the plain meaning as understood by skilled artisans, the plain and ordinary meaning of “authority” governs.⁷⁶

5.3 Term No. 19: “facilitating determining which user among said second plurality of users has the strongest connection . . .”

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning	Indefinite

This language is used in asserted claims 1 and 9 of the ‘476 Patent. Defendants bear the burden of proving indefiniteness by clear and convincing evidence.⁷⁷ Plaintiff IA reserves its arguments for its reply brief, after Defendants have explained their contentions regarding this term.

5.4 Term No. 20: “said reference point”

Plaintiff’s Construction	Defendants’ Construction
“a point that is used as a reference”	Indefinite

This language is used in asserted claim 1 of the ‘476 Patent. Plaintiff IA believes the dispute here is whether the term “said reference point” lacks antecedent basis. However, claim 1 reads, in relevant part, as follows:

... a) said session area is anchored to *at least one reference point*...

⁷⁶ See, e.g., *Thorner v. Sony Comp. Ent’t Am., LLC*, 669 F.3d 1362, 1365-1366 (Fed. Cir. 2012).

⁷⁷ *Nautilus*, 572 U.S. at 912.

...facilitating determining which user among said second plurality of users has the strongest connection with *said reference point* based, at least in part, on that user's location...⁷⁸

There is no lack of antecedent basis here. Further, the words “reference” and “point” are used consistently in the description and claims. Reference points are described in the disclosure. As one example, “a profile may only be visible in geofences that are located in places that are at least a hundred miles from a reference point, for example home.”⁷⁹ A reference point is a point used as a reference. More particularly, it is used as a reference in geolocation applications. This is made even clearer by reference to Figure 5 of the ‘476 Patent. This term would be readily understood by a person of ordinary skill in the art.⁸⁰

5.5 Term Nos. 21 and 31: “facilitating activating a timer associated with said one user among said second plurality of users . . . and thus the quality of interactions between said first plurality of users and said second plurality of users is regulated”⁸¹

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning.	Indefinite

This language is used in asserted claims 1 and 9 of the ‘476 Patent. Defendants contend this term is indefinite. Defendants bear the burden of proving indefiniteness by clear and convincing evidence.⁸² Plaintiff IA reserves its arguments for its reply brief, after Defendants have explained their indefiniteness contentions.

5.6 Term No. 22: “interferences among said second plurality of users are minimized”

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning.	Indefinite

⁷⁸ ‘476 Patent, col. 34, lines 31 – 63 (emphasis added).

⁷⁹ ‘476 Patent at col. 11, lines 50-53.

⁸⁰ See Easttom Decl., p. 10, para. 22.

⁸¹ Defendants included the identical phrase twice in their list of terms to be construed by the Courts, once as Term No. 21 and again as Term No. 31. Plaintiff IA addresses the phrase once in the present section of its brief.

⁸² *Nautilus*, 572 U.S. at 912.

This term is used in claim 8 of the ‘476 Patent and is described in the written description thereof.⁸³ Once again, Defendants contend this term is indefinite, but they bear the burden of proving indefiniteness by clear and convincing evidence.⁸⁴ Plaintiff IA reserves its arguments for its reply brief, after Defendants have explained their indefiniteness contentions.

5.7 Term Nos. 23, 24, 26, 27, 29, 30, and 32: The “process for” phrases of the ‘476 Patent

Plaintiff’s Construction	Defendants’ Construction
Plain and ordinary meaning. Not governed by Section 112(6).	Governed by Section 112(6). Indefinite.

These “process for” terms are used in claim 9 of the ‘476 Patent. Defendants assert these terms are means-plus-function terms that are indefinite for alleged lack of corresponding structure. None of these terms recite the word “means,” so there is a rebuttable presumption that § 112, ¶ 6 does not apply. To overcome the presumption, Defendants must show that the claim terms at issue fails to “recite[] sufficiently definite structure” or else recite “function without reciting sufficient structure for performing that function.”⁸⁵

The preamble of claim 9 is set forth below (emphasis added):

A computer software system having a *set of instructions* stored in at least one non-transitory *computer-readable medium* for controlling at least one digital computer in performing desired functions comprising:

As explained above in Section 4.9, claims drafted in this form are commonly known as Beauregard claims. The claim language makes it clear that the disputed terms describe the specific processes that are carried out by the “set of instructions” that are stored on the “non-transitory computer readable medium.” The Federal Circuit has held that recitation of traditional, physical structure is not necessary to avoid application of § 112, ¶ 6 in the context of computer-implemented

⁸³ See, e.g., ‘476 Patent, col. 11, line 54 – col. 12, line 2; col. 13, lines 48-63; col. 15, lines 1-8.

⁸⁴ *Nautilus*, 572 U.S. at 912.

⁸⁵ *Williamson*, 792 F.3d at 1348.

inventions.⁸⁶ For example, in *Zeroclick, LLC v. Apple, Inc.*, the Federal Circuit reversed a district court’s application of § 112, ¶ 6 to the terms “program” and “user interface code,” as they were sufficiently definite to connote structure.⁸⁷

Further, in specific the context of Beauregard claims, which are inherently computer-implemented, courts have regularly held that recitation of a “computer-readable medium” is sufficiently definite structure to avoid application of § 112, ¶ 6.⁸⁸

5.8 Term No. 25: “selectively enabling”

Plaintiff’s Construction	Defendants’ Construction
“permitting the eligible agent to participate”	Plain and ordinary meaning.

Plaintiff IA initially believed that the jury would benefit from an express construction of the term “selectively enabling,” which appears in asserted claims 1 and 9 of the ‘476 Patent. However, to reduce the number of disputed issues and the burden on the Court, Plaintiff IA now agrees this term need not be construed at this stage of the case, and that it should be given its plain and ordinary meaning.

5.9 Term No. 28: “interactive networking functionality”

Plaintiff’s Construction	Defendants’ Construction
“a networking functionality providing an opportunity for a user and agent to interact”	“professional networking functionality”

⁸⁶ *Apple*, 757 F.3d at 1298-99 (“Structure” to a person of ordinary skill in the art of computer-implemented inventions may differ from more traditional, mechanical structure.”) (emphasis added), *overruled on other grounds by Williamson*, 792 F.3d at 1349.

⁸⁷ *Zeroclick, LLC v. Apple, Inc.*, 891 F.3d 1003, 1008-09 (Fed. Cir. 2018).

⁸⁸ *See, e.g., Uniloc 2017 LLC v. HTC America, Inc.*, No. C18-1732-RSM, 2020 WL 6270825, at *9 n.8 (W.D. Wash. Oct. 26, 2020) (construing Beauregard claims and observing that “numerous courts have concluded that claim terms such as ‘computer-readable medium,’ ‘computer readable storage medium,’ executable . . . code,’ ‘executable software’ and ‘computer software’ connote sufficient structure”); *Uniloc 2017 LLC v. Google LLC*, No. 2:18-cv-492-JRG-RSP, 2020 WL 569858, *14-15 (E.D. Tex. Feb. 5, 2020) (construing Beauregard claims and finding that the term “computer-readable medium” connotes sufficiently definite structure to avoid application of § 112, ¶ 6); *Kit Check, Inc. v. Health Care Logistics, Inc.*, No. 2:17-cv-1041, 2019 WL 4142719, at *11 (E.D. Ohio Aug. 30, 2019) (same).

This term is found in asserted claims 1 and 4 of the ‘476 Patent. The primary disputes between the parties as to this term appear to center around whether the networking is “interactive” and whether the “networking” is limited to “professional networking.” Defendant’s proposed construction for this term completely removes the word “interactive” and then inserts the word “professional” in its place.

Neither modification proposed by Defendants is proper. The claim term clearly recites “interactive,” so Defendants’ proposed removal of the concept of interaction from their proposed construction is clearly contrary to the plain language of the claim. Similarly, despite the fact that the word “professional” is clearly not present in the claims, Defendants take the position that “professional” should be inserted into the construction of “interactive networking functionality.”

Defendants have not identified any lexicography, disavowal, or disclaimer that justifies departing from the meaning of “interactive networking functionality” as it would be understood by those of ordinary skill in the art. Accordingly, an “interactive networking functionality” is properly understood as a networking functionality providing an opportunity for a user and agent to interact.⁸⁹

6.0 CONCLUSION

For all of the foregoing reasons, Plaintiff IA respectfully asks the Courts to construe the disputed claim terms of the patents-in-suit as proposed by Plaintiff IA.

⁸⁹ See Easttom Decl., p. 13, para. 27.

Respectfully submitted on this 12th day of May, 2021.

/s/ Steven E. Ross

Steven E. Ross

Texas Bar No. 17305500

ROSS IP GROUP PLLC

5050 Quorum Drive, Suite 700

Dallas, Texas 75254

Phone: 972-661-9400

Facsimile: 972-661-9401

Email: sross@rossipg.com

/s/ Kenneth T. Emanuelson

Kenneth Thomas Emanuelson

Texas Bar No. 24012591

THE EMANUELSON FIRM, P.C.

17304 Preston Road, Suit 800

Dallas, Texas 75252

Phone: 469-363-5808

Email: ken@emanuelson.us

Attorneys for Plaintiff Intelligent Agency, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document (along with the attachments or exhibits, if any) is being served on all counsel of record via the Court's Electronic Case Filing ("ECF") system on this 12th day of May, 2021.

/s/ Steven E. Ross

Steven E. Ross