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

INTELLIGENT AGENCY, LLC,	§	
	§	
Plaintiff,	§	
v.	§	Civil Action No. 4:20-cv-00185-ALM
	§	
7-ELEVEN, INC.,	§	
	§	
	§	
Defendant.	§	Jury Trial Demanded

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

INTELLIGENT AGENCY, LLC,	§	
	§	
Plaintiff,	§	
v.	§	Civil Action No. 1:20-cv-0777-ADA
	§	
NEIGHBORFAVOR, INC.,	§	
	§	
	§	
Defendant.	§	Jury Trial Demanded

PLAINTIFF INTELLIGENT AGENCY, LLC'S
<u>REPLY BRIEF ON CLAIM CONSTRUCTION</u>

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1.0   INTRODUCTION

Plaintiff Intelligent Agency, LLC ("IA") respectfully submits this reply brief on claim construction.

2.0   CONSTRUCTION OF THE DISPUTED TERMS OF THE '610 PATENT

2.1   Term No. 1:[1] Whether the preambles of claims 1, 6, 8, and 10 are limiting

Defendants first contend the preamble of claim 6 of the '610 Patent, "[m]obile equipment comprising," is limiting because the body of the claim recites "said mobile equipment."[2] But the three words that comprise the preamble of claim 6 are merely duplicative of the limitation "said mobile equipment" that is recited in the body of the claim. The body of claim 6 defines a structurally complete invention, and the preamble adds nothing that is not already required by the body of the claim. The preamble therefore is not limiting.[3]

Next, without citing any authority, Defendants assert the preamble of claim 8 includes *all* the following language:[4]

8. Apparatus comprising at least one processor; and at least one memory including

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[1] 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.).

[2] Defs' Resp. Br. at 2. The Federal Circuit instructs that "[n]o litmus test defines when a preamble limits claim scope," and thus the court has identified various "guideposts" for district courts to use in making that determination. Catalina Marketing Int'l, Inc. v. Coolsavings.com, Inc., 289 F.3d 801, 808 (Fed. Cir. 2002).

[3] *Am. Med. Sys., Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1358-59 (Fed. Cir. 2010) ("If the preamble 'is reasonably susceptible to being construed to be merely duplicative of the limitations in the body of the claim (and was not clearly added to overcome a [prior art] rejection) we do not construe it to be a separate limitation.") (quoting *Symantec Corp. v. Computer Assocs. Int'l, Inc.*, 522 F.3d 1279, 1288-89 (Fed. Cir. 2008). Plaintiff IA additionally notes that Defendants have neglected to propose a construction for the preamble of claim 6. If the preamble of claim 6 actually "recite[d] essential structure or steps, or if it [were] 'necessary to give life, meaning, and vitality' to the claim,"[3] Defendants no doubt would have proposed a construction for the preamble. *Catalina Mktg.*, 289 F.3d at 808.

[4] Defs' Resp. Br. at 2 (citing to '610 Patent at 15:60 – 16:3). According to Defendants, the extent of the preamble is determined by the formatting of the printed copy of the patent, *id*. at n.3, but that is not the law.

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computer program code; the at least one memory and the computer program code configured to, with the at least one processor, cause 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 predefined location based criterion in a machine implemented method to facilitate a prospective business transaction involving a principal, an agent, and a user, wherein said generation of indicia is regulated by at least:

The law is clear, however, that transition words (such as "comprising") "typically mark the end of the preamble, with what follows constituting the body of the claim."[5] The preamble of claim 8 therefore is "[a]pparatus comprising," and everything in the claim following the word "comprising" is the body of the claim. Defendants have not presented any argument as to why the correct preamble, "[a]pparatus comprising," should be limiting.

Finally, Defendants incorrectly assert that Plaintiff IA has not provided any rationale for its position that the phrase "for controlling at least one general purpose digital computer in performing the desired functions that are necessary" of the preamble of claim 10 is not limiting.[6] Plaintiff IA explained in its opening brief, however, that this phrase merely states a purpose or intended use for the invention, which is fully defined in the remainder of the claim.[7] "[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.'"[8] The disputed phrase in the preamble of claim 10 merely states a purpose or intended use and is therefore not limiting.

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[5] *SIMO Holdings Inc. v. Hong Kong uCloudlink Network Tech. Ltd.*, 983 F.3d 1367, 1375 (Fed. Cir. 2021).

[6] Defs' Resp. Br. at 2.

[7] Plf's Opening Br. at 9.

[8] *Catalina Mktg.*, 289 F.3d at 808 (quoting *Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997); *see also TomTom, Inc. v. Adolph*, 790 F.3d 1315, 1323 (Fed. Cir. 2015) (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 purpose of the invention.").

2.2   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"

Defendants do not dispute that the word "principal" is a common word with a well-understood meaning. In fact, it is a word that is regularly encountered by judges and juries. Defendants, however, assert the inventor disavowed the full scope of the plain and ordinary meaning of "principal" based on a passage from the prosecution history.[9]

But the passage cited in Defendants' brief is not a clear disavowal of claim scope. The standard for finding disavowal is "exacting."[10] To disavow or disclaim the full scope of a claim term, the patentee's statements in the prosecution history must amount to a "clear and unmistakable" surrender.[11] "Where an applicant's statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable."[12] In the cited passage, the applicant was discussing a "principal-controlled condition," a phrase that is not recited in the issued claims of the '610 Patent.[13] The comments about the "principal" were permissive (*i.e.*, they used the word "can," not "must"), and they were expressly limited to "certain implementations." They do not amount to a clear and unmistakable disavowal of the full scope of the meaning of "principal." Accordingly, the meaning of "principal" should not be limited based on the passage

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[9] Defendants' brief takes the passage out of context because it fails to quote all relevant portions.

[10] *GE Lighting Solutions, LLC v. Agilight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014).

[11] *See Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1329 (Fed. Cir. 2009); *see also Thorner v. Sony Computer Entm't Am. LLC,* 669 F.3d 1362, 1366 (Fed. Cir. 2012) ("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.").

[12] *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013).

[13] Instead, the claims of the '610 Patent recite a "principal-controlled participation condition." *See, e.g.*, '610 Patent at 14:57.

quoted above.

Defendants' proposed construction is also inconsistent with the plain language of the claims. According to Defendants, a "principal" is "an entity that enables or disables agent IDs and allows or disallows the participation of those agent IDs." But the plain language of claim 1, for example, states that the "principal-controlled participation condition" is what "selectably enables said second mobile equipment, associated with said agent digital identifier, to participate to said machine implemented method."[14] Thus, it is the "principal-controlled participation condition," not the principal, that enables participation in the claimed method. Defendants proposed construction is inconsistent with the intrinsic evidence. The word "principal" should be given its plain and ordinary meaning.

2.3   Term No. 3: "agent"

Plaintiff's Construction	Defendants' Construction
Plain and ordinary meaning	"person or people representing a principal whose proxies are agent IDs"

Defendants once again seek to limit the plain and ordinary meaning of the common word "agent" based on the same passage from the prosecution history discussed above. But that passage does not contain a "clear and unmistakable" disavowal of claim scope.[15] As explained above, the passage focuses on the phrase "principal-controlled condition," and relies on that phrase to distinguish the prior art. The '610 Patent, however, uses the words "principal" and "agent" in accordance with their well-understood, plain and ordinary meanings:

> A contract to be made by an agent on behalf of a principal is considered to be a contract of the principal and not that of the agent. It allows the principal to approve somebody to carry out her duties, either for a precise purpose or generally (i.e., to conduct transactions). The agency relationship is typically entered into by informal

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[14] '601 Patent at 14:58-62. Moreover, claim 1 states it is the "second mobile equipment," not "agent IDs," that is enabled to participate in the machine implemented method.

[15] "Where an applicant's statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable." *3M Innovative Props.*, 725 F.3d at 1326.

agreement, but also can occur by formal agreement (in certain cases, the agency affiliation must be specified in writing).[16]

That an agent represents a principal is thus part of the plain and ordinary meaning of "agent." Defendants, however, want to limit that meaning by requiring the agent to have "proxies" in the form of "agent IDs." But that is inconsistent with the language of the claims. Claim 1, for example, recites that "second mobile equipment" is "associated with an agent digital identifier."[17] The claim does not recite the terms "proxies" or "agent IDs." Nor does it recite that "an agent" is associated with "an agent digital identifier"; instead, it recites that the "second mobile equipment" is associated with the "agent digital identifier." Defendants' proposed construction is therefore inconsistent with the plain language of the claims. The word "agent" should be given its plain and ordinary meaning.

2.4   Term No. 4: "agent-user matching algorithm using predefined data selected from the group consisting of: . . . and combinations thereof"[18]

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

Term No. 4 does not recite the word "means," and Defendants have not met their burden of showing that the term does not "recite[] sufficiently definite structure" or else recites "function without reciting sufficient structure for performing that function."[19] Defendants brief fails to cite,

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[16] '610 Patent at 1:12-19.

[17] *Id*. at 14:32-33.

[18] The parties have agreed that "an agent-user matching algorithm" is "an algorithm matching agents to users." Joint Claim Construction and Prehearing Statement ("JCCPS"), Ex. A (Dkt. #49-1, E.D. Tex.) (Dkt. #49-1 W.D. Tex.) at 2. The parties have also agreed that the longer phrase "an agent-user matching algorithm using predefined data selected from the group consisting of: . . . and combinations thereof," identified here as Term No. 4, includes a closed Markush group. *Id.* at 1. Defendants have not cited any case law supporting their contention that a closed Markush group may be *further limited* by additionally subjecting it to means-plus-function treatment.

[19] *Williamson v. Citrix Online, LLC*, 792 F.3d 1339,1348 (Fed. Cir. 2015) (en banc in relevant part).

much less distinguish, the Federal Circuit's decision in *Apple Inc. v. Motorola, Inc.*, which states:

> "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. . . . Structure may also be provided by describing the claim limitation's operation, such as input, output, or connections.[20]

In *Apple*, the Federal Circuit held that "heuristic [for performing a function]" was sufficiently definite structure to avoid means-plus-function treatment in part because the claim described the operation and objectives of the heuristic.[21]

Here, the context provided by the language of the claims similarly informs the structural meaning of Term No. 4. Claim 1, for example, reads:

> 1. A machine implemented method for facilitating a prospective business transaction involving a principal, an agent, and a user comprising:
>
> at least partially ***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***, as determined by using at least one ***microprocessor***, wherein said ***generation of indicia is regulated by at least***:
>
> an ***agent-user matching algorithm*** using predefined data selected from the group consisting of: . . . and combinations thereof;[22]

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[20] *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1298-99 (Fed. Cir. 2014) (citations omitted), *overruled on other grounds by Williamson*, 792 F.3d at 1349.

[21] *Apple*, 757 F.3d at 1300; *see also Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1008 (Fed. Cir. 2018) ("program that can [perform a function]" was sufficiently definite in part because the claim described the operation of the program); *Linear Tech. v. Corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1319-21 (Fed. Cir. 2004) ("circuit [for performing a function]" found to be sufficiently definite because the claim recited the "objectives and operations" of the circuit).

[22] '610 Patent at 14:27-56 (emphasis added).

Thus, Term No. 4 (*i.e.*, the overall agent-user matching algorithm term) partially regulates the "generation of indicia" that "a first mobile equipment" and "a second mobile equipment" meet a "location based criteria."[23] The vast majority of the language of Term No. 4 is devoted to specifying in detail the inputs (*i.e.*, the "predefined data") to the algorithm. The context of the claim specifies that the objective of Term No. 4 is to partially regulate the "generation of indicia" that "a first mobile equipment" and "a second mobile equipment" meet a "location based criteria," as determined by a microprocessor. The detailed specification of the inputs and the specification of the objective recited in the claim language make it clear that Term No. 4 is sufficiently definite structure to avoid means-plus-function treatment.[24]

2.5   Term No. 6: "selectably enables"

Plaintiff's Construction	Defendants' Construction
"permits the eligible agent to participate"	Indefinite.

Defendants criticize the '610 Patent's use of the word "selectably" and argue that it is not "a word in the English language" and "has no ordinary or customary meaning."[25] Defendants also criticize Plaintiff's expert, Dr. Easttom, for allegedly not identifying where he has come across use of the term.[26] In rebuttal, Dr. Easttom conducted a Google Patent search for patents that use the

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[23] The "generation of indicia" is also regulated by the recited "principal-controlled participation condition." *Id*. at 14:57-63

[24] When a claim term recites the word "means," an algorithm described in the specification can provide the "structure" necessary to make the claim term definite. *Aristocrat Techs. Australia Pty. Ltd. v. international Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008); *WMS Gaming, Inc. v. International Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999). When a claim term does not recite the word "means," the same algorithm ***recited in the claim itself*** (Term No. 4 in this case) provides the "structure" necessary to prevent the claim term from being subjected to means-plus-function treatment. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015) (en banc) (claim term that does not recite the word "means" should not be treated as means-plus-function term unless the challenger shows the claim term fails to recite sufficiently definite structure).

[25] Defs' Resp. Br. at 7.

[26] *Id*. at 8. Of course, Defendants bear the burden of proving alleged invalidity by clear and convincing evidence, and this is Plaintiff's only opportunity to respond to their contentions.

term "selectably enables" and found 134,046 matches.[27] Dr. Easttom also identified multiple

patents that were prosecuted by the highly respected law firm of Baker Botts L.L.P. (the same firm

that is representing both Defendants here) that use the word "selectably" without providing any

definition of the word.[28] Further, although it is not identical to the challenged term, the word

"selectable" certainly appears in dictionaries.[29] Defendants' criticism of the '610 Patent's use of

the word "selectably" rings hollow in light of this evidence.

Contrary to Defendants' assertions, the term "selectably" has a plain and ordinary meaning,

particularly when viewed in the context of the claims and the rest of the intrinsic evidence. To the

extent the Courts determine that "selectably enables" requires construction, Plaintiff IA proposes

it be construed as "permits the eligible agent to participate." Defendants fail to offer any competing

proposed construction. In any event, Defendants have not met their burden to show by clear and

convincing evidence that the term fails to "inform those skilled in the art about the scope of the

invention with reasonable certainty."[30]

2.6   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"[31]

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[27] Expert Rebuttal Report of William C. Easttom, II ("Easttom Rebuttal Rep.") at ¶ 8. A copy of the Easttom Rebuttal Report is attached hereto as **Exhibit A**.

[28] Exhibit A, Easttom Rebuttal Rep. at ¶ 9

[29] Exhibit B, American Heritage College Dictionary (2007) at 1257 (PCC0000012). It is unclear why Defendants contend use of the "ly" suffix allegedly renders the word unintelligible.

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

[31] 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.). Defendants have not cited any case law supporting their contention that a closed Markush group may be *further limited* by additionally subjecting it to means-plus-function treatment.

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.

Defendants contend this lengthy term should be subjected to means-plus-function treatment despite absence of the word "means," but they again fail to meet their burden of showing that the term fails to "recite[] sufficiently definite structure" or else recites "function without reciting sufficient structure for performing that function."[32] Defendants assert the term "indicator" does not connote any structure, selectively citing to one particular definition of "indicator" ("one that indicates").[33] However, Defendants overlook the fact that the very **same dictionary** also provides a clearly structural definition of "indicator" ("a pointer on a dial or scale").[34] The existence of this definition shows that "indicator" denotes a type of structure with a generally understood meaning.[35]

Defendants also fail to rebut Plaintiff IA's argument that the context of the claim confirms the structural nature of the claimed "indictor." Defendants' brief does not dispute that the claim language specifies the objectives (*e.g.*, "to provide an indication") and operation (*e.g.*, "said indication is regulated by at least: an agent-user matching algorithm . . . and a principal-controlled participation condition . . . ."), of the "indicator." This is sufficient to avoid application of § 112, ¶ 6.[36] Because § 112, ¶ 6 does not apply, there is no need to search for corresponding structure.

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[32] *Williamson,* 792 F.3d at 1348.

[33] Defs' Resp. Br. at 10 and Exhibit J (Dkt. #51-10, E.D. Tex.) (Dkt. #52-10, W.D. Tex.), p. 3.

[34] Defs' Resp. Br. at Exhibit J (Dkt. #51-10, E.D. Tex.) (Dkt. #52-10, W.D. Tex.), p. 3

[35] *Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580, 1583 (Fed. Cir. 1996) ("Dictionary definitions make clear that the noun "detent" denotes a type of device with a generally understood meaning in the mechanical arts, even though the definitions are expressed in functional terms.").

[36] *Zeroclick*, 891 F.3d at 1008 ("program that can [perform a function]" was sufficiently definite in part because the claim described the operation of the program); *Apple*, 757 F.3d at 1299 ("Structure may also be provided by describing the claim limitation's operation, such as input, output, or connections."); "*Linear Tech.,* 379 F.3d at 1319-21 ("circuit [for performing a

2.7 Term No. 8: "said machine implemented method"

Plaintiff's Construction	Defendants' Construction
"a method implemented by a machine"	Indefinite

Defendants contend the term "said machine implemented method" lacks antecedent basis and therefore renders claim 6 indefinite. To prevail on this point, Defendants must show by clear and convincing evidence that claim 6 fails to "inform those skilled in the art about the scope of the invention with reasonable certainty."[37] However, "[t]he failure to provide explicit antecedent basis for terms does not always render a claim indefinite."[38] The issue is whether the claim, when viewed in the context of the intrinsic evidence, reasonably informs those skilled in the art of the scope of the invention.[39]

Here, a person skilled in the art viewing the intrinsic evidence in context would easily understand that the "prospective business transaction" recited in claim 6 provides at least implicit antecedent basis for "said machine implemented method."[40] Independent claim 1 is directed to "[a] machine implemented method for facilitating a prospective business transaction."[41] Claim 6, the claim at issue here, recites:

> 6. Mobile equipment comprising:
>
> an indicator configured to provide an indication that said first mobile equipment . . . and a second mobile equipment . . . meet a location based criterion, wherein said location based criterion *facilitates a prospective business transaction* . . .[42]

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function]" found to be sufficiently definite because the claim recited the "objectives and operations" of the circuit).

[37] *Nautilus,* 572 U.S. at 910.

[38] *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006) (holding that "an antecedent basis can be present by implication").

[39] *Id.* ("When the meaning of the claim would reasonably be understood by persons of ordinary skill when read in light of the specification, the claim is not subject to invalidity upon departure from the protocol of 'antecedent basis.'").

[40] '610 Patent at 15:22-23.

[41] *Id*. at 14:27-28.

[42] *Id*. at 15:17-23. Independent claim 8 recites "a machine implemented method to facilitate a prospective business transaction." *Id*. at 15:67 – 16:1. Independent claim 10 recites "a machine

Moreover, the specification teaches: "According to a first aspect of the present invention, a method comprises receiving an indication that a user equipment has received a wireless digital identifier signal associated to an agent equipment because of at least a location criteria . . . .[43] In view of this intrinsic evidence, a person skilled in the art would have no trouble determining that "said machine implemented method" refers to a machine implemented method that facilitates the "prospective business transaction" recited in claim 6.[44]

2.8   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.

Defendants have not overcome the presumption against applying § 112, ¶ 6. Claim 10 is directed to "[a] computer software system having a set of instructions stored in a non-transitory computer-readable medium . . . ."[45] Regardless of whether a claim is identified as a Beauregard claim, however, Courts have consistently held that the recited "computer-readable medium" language connotes sufficient structure to avoid application of § 112, ¶ 6.[46] Further, the "process

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implemented method for facilitating a prospective business transaction." *Id*. at 16:38-39. Independent claim 17 recites "a machine implemented method for advancing a prospective business transaction." *Id*. at 18:1-2.

[43] *Id*. at 1:46-50.

[44] *Nautilus,* 572 U.S. at 910; *Energizer Holdings,* 435 F.3d at 1370.

[45] Recitation of the "non-transitory computer-readable medium" in this context characterizes this as a Beauregard claim. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011); *In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995).

[46] *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).

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for" terms in claim 10 provide additional structural context by specifying the objective and operation of the claimed software system.[47] Defendants have failed to rebut the presumption against application of § 112, ¶ 6.

Apparently sensing the weakness of their position, Defendants pivot away from the "process for" language of claim 10 and instead focus on the word "modules," which appears in claim 10's preamble.[48] Contrary to Defendants' apparent contention, however, use of the word "module" in a patent claim does not *ipso facto* trigger application of § 112, ¶ 6.[49]

2.9   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.

Plaintiff IA contends the corresponding structure for this claim term is "memory 102 in combination with controller 101 of server 100 programmed to carry out the algorithm set forth in Figures 3 and 6 and related description, including but not necessarily limited to the description in

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[47] *Zeroclick*, 891 F.3d at 1008 ("program that can [perform a function]" was sufficiently definite in part because the claim described the operation of the program); *Apple*, 757 F.3d at 1299 ("Structure may also be provided by describing the claim limitation's operation, such as input, output, or connections."); "*Linear Tech.,* 379 F.3d at 1319-21 ("circuit [for performing a function]" found to be sufficiently definite because the claim recited the "objectives and operations" of the circuit).

[48] Plaintiff notes the word "modules" does not appear in the "process for" terms, Term Nos. 9-12, identified for construction by Defendants. JCCPS, Ex. B, (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.).

[49] *See, e.g., Huawei Technologies Co. Ltd. v. Verizon Communications, Inc.*, No. 2:20-cv-00030-JRG, 2021 WL 150442, at *41-43 (E.D. Tex. Jan. 15, 2021) (finding that multiple claim terms that recite "module" are not subject to § 112, ¶ 6 because the claims provide "sufficient structural context to sustain the presumption against applying § 112, ¶ 6"); *Midwest Athletics and Sports Alliance LLC v. Xerox Corp.*, No. 6:19-cv-06036, 2020 WL 7692767, at *19 (W.D.N.Y. Dec. 28, 2020) (finding that "multi-development module" and "single development module" are not subject to § 112, ¶ 6).

col. 8, [lines] 35-60 and col. 11, line 52 – col. 12, line 7.[50] Significantly, Defendants do not dispute

that the specification of the '610 Patent discloses corresponding structure (*i.e.*, an algorithm) that

defines the "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." Instead,

Defendants dispute only whether the specification discloses sufficient corresponding structure for

the specific function of ***storing*** that computer code in the "non-transitory computer-readable

medium." However, the '610 Patent clearly discloses that the code is stored on Memory 102.[51]

To the extent Defendants have narrowed their argument to focus only on the act of storing

per se, storing is a simple function that can be achieved by any general purpose computer without

special programming; it therefore falls within what is known as the "Katz Exception" to *WMS*

Gaming's rule requiring disclosure of an algorithm.[52] *Katz* held that a standard microprocessor can

serve as sufficient structure for "functions that can be achieved by any general purpose computer

without special programming."[53] In *Katz*, claim terms involving basic "processing," "receiving,"

and "storing" functions were not necessarily indefinite because a general purpose computer need

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[50] JCCPS, Ex. B, (Dkt. #49-2, E.D. Tex.) (Dkt. #49-2, W.D. Tex.) at 8.

[51] *See, e.g.,* '610 Patent at 6:45-50 ("[A] matching algorithm stored on Memory 102 may be overseeing all the functionalities necessary to ensure that user of User Equipment 165 receives a notification . . . ."); *Id.* at 12:26-29 ("In the embodiment of FIG. 7, Agent Equipment 165 and User Equipment 160, satisfy the location portion of the matching algorithm stored in Memory 102 and running on Server 100."); *Id.* at 14:4-8 ("A computer-readable medium may comprise a computer-readable storage medium that may be any media or means that can contain or store the instructions for use by or in connection with an instruction execution system, apparatus, or device, such as a computer.").

[52] *See In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303 (Fed. Cir. 2011); *see also EON Corp. IP Holdings LLC v. AT&T Mobility LLC*, 785 F.3d 616, 621-24 (Fed. Cir. 2015) (analyzing and explaining application of the "Katz Exception"). While the Katz Exception is a "narrow exception," Defendants have narrowed their argument such that the exception becomes applicable here.

[53] *Katz*, 639 F.3d at 1316.

not be "specially programmed to perform the recited function."[54] To the extent Defendants contest whether the specification of the '610 Patent discloses an algorithm for the simple function of storing, their argument fails in view of the Katz Exception.[55]

2.10   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.

Defendants' brief incorrectly asserts that the Parties agree on the function recited in this claim term;[56] they do not.[57] The recited function is "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." Figures 7-9 and related written descriptions specify the algorithms for determining whether the "first mobile equipment" and the "second mobile equipment" meet "a location based criterion." The algorithms of Figures 5 and 6, along with their related written descriptions, specify structure for causing the generation of indicia. Defendants' arguments based on lack of corresponding structure for other claim language, which is not actually recited function, are irrelevant and should be rejected.

2.11   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

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[54] *Id.*

[55] *Id.*

[56] Defs' Resp. Br. at 19.

[57] Plf's Opening Br. at 17-18. Defendants incorrectly contend the recited function comprises almost the entirety of claim 17. Defendants' misidentification of the recited function adversely affects their entire argument on this term.

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.

Defendants' misidentification of recited function for claim 17 carries over to Term No. 15, which appears in dependent claim 20. Defendants incorrectly assert that Term No. 15 adds an additional function to be performed by the "means for causing the generation of indicia" recited in claim 17. But Defendants argument is contrary to the plain language of claim 20, which states that "said causing the generation of indicia" is "additionally regulated by program code."[58] This language does not state a function performed by the "means for causing the generation of indicia"; instead, it recites program code that additionally regulates the "means for causing the generation of indicia." Defendants have failed to meet their burden to show that § 112, ¶ 6 applies to this term.

2.12   Term No. 16: "location based partition arrangement"

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

Term No. 16, recited in dependent claim 16, merely recites an additional process that regulates "said causing the generation of indicia" of claim 10. The regulating is "via a location based partition arrangement associated with said principal." The written description of the '610 Patent, which admittedly does not recite the identical word "partition," nevertheless contains ample teachings of a principal dividing agents into groups or otherwise distinguishing between agents.[59] Moreover "location" and "partition" are common words. There is nothing to indicate

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[58] '610 Patent at 18:47-49.

[59] *See, e.g.,* '610 Patent at 5:52-55 ("…the principal could also create hierarchies among agents so that the probability of agents interfering with each other will be minimized.") *Id*. at 5:62-67 ("…in case of multiple agents and multiple users in the same area…the algorithm contained in Memory 102 and running on Server 100 may distribute and rebalance the load among agents according to a range of principal's preferences.").

their meanings would not be readily apparent to persons skilled in the art. Defendants have failed

to meet their burden of showing this term is indefinite by clear and convincing evidence.

3.0   CONSTRUCTION OF THE DISPUTED TERMS OF THE '476 PATENT

3.1   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

Defendants assert that the inventor has "defined and described" the term "session area"

multiple times, in "irreconcilably different" ways,[60] but this is not factually correct. The term

"session area" is used 32 times in the claims and 190 times in the specification of the '476 Patent.[61]

"Session area" is used in a consistent manner to refer to an electronically-defined area having a

functionality associated with it.[62]

Despite the abundance of information and guidance as to the meaning of "session area"

within the intrinsic record, Defendants base their argument on a handful of statements made during

the prosecution history, including statements that a session area can be "specific to a particular

physical space," "generated around a reference point," "be defined by a series of lines forming a

perimeter," and can, in at least one implementation, be "the output of the combination of a location-

based criterion and an admission criterion."[63]   These statements are clearly not express

"definitions" of the term "session area," and are not inconsistent. They are simply descriptions of

particular aspects and implementations of session areas. Based on the above descriptions, a

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[60] Defs' Resp. Br. at 24.
[61] *See* '476 Patent.
[62] Plf's Opening Br. at 19-20.
[63] Defs' Resp. Br. at 25.

"session area" represents a real-world location or physical space. This concept is fully consistent with the written description, drawings and claims of the '476 Patent.

Defendants cite to other statements by the inventor during prosecution, including statements that a session area is a "geofence" and "a predetermined area defined via electronic means having functionalities and analytics associated with it," and are "digitally generated areas whose parameters, functionalities, and analytics are controlled via the authority server apparatus." Defendants concede that the term "geofence" means "a virtual perimeter for a real-world geographic area."[64] These terms are simply different terms for the same operative concept. These word combinations are in no way inconsistent with or contradictory to one another.[65]

Having reviewed the specification and prosecution history, Dr. Chuck Easttom has explained in detail why there is no discrepancy or inconsistency between the above statements.[66]

3.2   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"

Defendants concede that the plain meaning of a term is generally the correct construction unless the patentee acts as its own lexicographer or makes a clear and unmistakable disclaimer.[67] Defendants argue, however, that the inventor (a) acted as his own lexicographer and (b) made a "clear and unmistakable" disclaimer of claim coverage with respect to the term "authority."[68]

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[64] Defs' Resp. Br. at 25-26.

[65] Defendants cite to *Infinity Computer Products, Inc. v. Oki Data Americas, Inc.*, 987 F.3d 1053, 1059 (Fed. Cir. 2021), which related to a term, "passive link," not found in the written description or original claims. The court relied almost entirely on the prosecution history, and the applicant took two directly contradictory positions during prosecution.

[66] *See* Exhibit A, Easttom Rebuttal Rep. at ¶¶ 13-20.

[67] Defs' Resp. Br. at 28, citing *Retractable Techs., Inc. v. Becton, Dickinson & Co.*, 659 F.3d 1369, 1371 (Fed. Cir. 2011).

[68] *Id. See also GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014).

Defendants have not identified any portion of the claims or written description of the '476 Patent, or any arguments made by the patentee to secure allowance of any claim of the '476 Patent, that they believe either represents lexicography or clear surrender of subject matter.   Instead, Defendants cite to *one statement* made in the course of prosecution of a different patent application claiming priority to the '476 Patent.[69]   The applicant's statement simply associated the term "authority" with "a principal," and then described how a principal is described in the application.[70]

The patentee certainly did not "clearly set forth a definition" of "authority" and did not "clearly express an intent to define" authority by that statement.[71]   Further, one statement made in the prosecution of a different patent application does not constitute a "clear and unmistakable" surrender of subject matter for the '476 Patent.[72]   Dr. Easttom has explained the reasons why the statement identified by Defendants would be understood by one of skill in the art as an *example*, and not a universal definition.[73]   Accordingly, as neither of the requisite standards are met, the term "authority" is properly understood according to its plain and ordinary meaning.

3.3   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

Defendants argue that "the strongest connection" is a term of degree, and indefinite.[74]   A term of degree is not in any sense inherently indefinite, and the process for construing a "term of degree" is not fundamentally different from the basic process for construing other claim terms.[75]

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[69] Defs' Resp. Br. at p. 29.
[70] Defs' Resp. Br. at p. 29.
[71] *GE Lighting Solutions*, 750 F.3d at 1309; see also *Thorner*, 669 F.3d at 1365.
[72] *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1329 (Fed. Cir. 2009).
[73] *See* Exhibit A, Easttom Rebuttal Rep. at ¶¶ 21-23.
[74] Defs' Resp. Br. at 29.
[75] *See, e.g., Sonix Tech. Co. v. Publications Int'l, Ltd.,* 844 F.3d 1370, 1381, 121 U.S.P.Q.2d 1247 (Fed. Cir. 2017) (construing "visually negligible.")

The core inquiry regarding definiteness is whether the term reasonably apprises one of skill in the art as to the scope of the claimed invention.[76] As noted above, the Federal Circuit has consistently rejected the proposition that some sort of numerical precision is required for a term of degree to be found definite.[77] All that is required is that the patent provide some objective standard for measuring the term of degree.[78]

In the present case, the claims, in each case, provide guidance to those of skill in the art as to how the "strongest connection" is to be evaluated. In claim 1, the claim language states that the strength of the user's connection with the reference point is based, at least in part, on the user's location with respect to the reference point. In other words, a user having a location close to the reference point has a stronger connection to the reference point than a user having a location further away from the reference point. The proximity between the reference point and a user constitutes an objective standard for measuring the term of degree, and one of skill in the art would have no difficulty determining which user out of a group of users has the "strongest" connection to a reference point based on location.[79]

Claim 9 recites a similar, but different objective standard. According to the language of claim 9, the strongest connection to a session area is determined based, at least in part, on time spent within a set of spatial boundaries associated with the session area, such that said second plurality of users are ranked one above the other according to status. The user with the "strongest connection" to a session area is the user who has the largest amount of time spent within special

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[76] *Sonix,* 844 F.3d at 1377.

[77] *See, e.g., Guangdong Alison Hi-Tech Co. v. Int'l Trade Comm'n,* 936 F.3d 1353 (Fed. Cir. 2019).

[78] *See Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp*., LLC, 879 F.3d 1332, 1346 (Fed. Cir. 2018).

[79] *See* Exhibit A, Easttom Rebuttal Rep. at ¶¶ 24-28.

boundaries associated with that session area. As above, "time spent within spatial boundaries" is the objective standard by which the strength of the connection is measured.

3.4   Term No. 20: "said reference point"

Plaintiff's Construction	Defendants' Construction
"a point that is used as a reference"	Indefinite

With respect to this term, Defendants attempt to insert ambiguity where none exists. The term "said reference point" does not lack antecedent basis. It clearly refers to the "at least one reference point" recited earlier in the claim. There is no other "reference point" recited in the claim. This is no different than if the claim recited "*a* reference point" and then "*said* reference point," or "at least a *first* reference point" and then "said *first* reference point."

Defendants are correct that the use of "at least one" leaves open the possibility that the claim would read on an embodiment with more than one reference point, but this fact is not relevant. Defendants' statement would be true even if the claim did not include the "at least one" language. Every "comprising" claim leaves open the possibility of additional elements beyond the specific elements recited. In sum, there is no ambiguity as to which "reference point" is identified by "said reference point," and one of skill in the art would have no difficulty understanding this term.[80]

3.5   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

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[80] See Exhibit A, Easttom Rebuttal Rep. at ¶¶ 27-28.

[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.

As with "strongest connection" above, Defendants argue here that "quality of interactions" is a term of degree and that there is insufficient guidance in the specification as to how to determine if one particular interaction has a higher "quality" than another interaction.[82] Defendants' position ignores the language of claims 1 and 9, both of which clearly set out *how* the "quality of interactions" is regulated via a specific method.[83]

According to the method set forth in claim 1, for example, a timer is activated having an expiration. If a requisite action is not taken by the user before the expiration of the timer, an association between that user and other users is inhibited. If these time-management steps are taken, this constitutes "regulation" of the "quality of interactions" between the users. "Quality," in this context, is used to essentially mean "timeliness," but the claim requires no minimum or maximum value for "quality" or timeliness. The claim requires only that the quality / timeliness be regulated according to the steps set forth. There is nothing indefinite about this language.

3.6   Term No. 22: "interferences among said second plurality of users are minimized"

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

Defendants argue that "interferences…are minimized" is a term of degree and that one of skill in the art would not understand what interferences are or how they might be minimized. As with "strongest connection" discussed above, Defendants' position on this term is directly contrary to the language of the claim 8, which sets forth, in its own language, the specific mechanism by which interferences between users are minimized. Specifically, certain users are associated with boundaries within which certain users enjoy certain privileges.

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[82] Defs' Resp. Br. at 31.
[83] '476 Patent, Claim 1. Claim 9 sets forth the same steps in slightly different language.

The privileges that may be afforded to users are referenced multiple times in the '476 Patent, including at column 6, lines 42-45 and at column 15, lines 1-8. The '476 Patent expressly discusses the potential for an imbalance or overpopulation of users of the same type conducting conflicting activities in the same geographical area and thereby interfering with one another. This problem is referred to in the '476 Patent specification as a "tragedy of the commons" problem, which is discussed for example at column 10, lines 26-30; column 12, lines 22-25 and at column 20, lines 51-53.

Accordingly, the '476 Patent expressly identifies what "interferences among users" are and describes the specific mechanism by which "interferences among users" are minimized. Accordingly, there is nothing indefinite about the language "interferences…are minimized."

3.7   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.

As noted in Plaintiff's Opening Brief, the Federal Circuit and other courts have repeatedly cautioned against applying "means plus function" treatment to claims to software-related inventions not expressly reciting "means."[84] In *Apple Inc. v. Motorola, Inc.*,[85] the Federal Circuit was unequivocal as to the consequences of requiring physical structure in software limitations lacking "means" language.[86] The court reached the same conclusion in *Zeroclick, LLC v. Apple Inc.*[87] The district court had treated "program" and "user interface code" as "nonce" words and

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[84] Plf's Opening Br. at 23-24.
[85] 757 F.3d 1286 (Fed. Cir. 2014).
[86] *Apple v. Motorola*, 757 F.3d 1286 at 1298-1299 (Fed. Cir. 2014).
[87] 891 F.3d 1003, 1007-09 (Fed. Cir. 2018).

treated the software limitations as means-plus-function limitations. The Federal Circuit held that this was in error, and that the limitations were not means-plus-function limitations.[88]

With respect to claims and claim elements directed to a "computer readable medium," in particular, the courts have found, time and again, that construction of such terms as "means plus function" terms is generally not appropriate.[89] Courts have applied similar treatment to limitations reciting "code portion," "computer code," "code" and "software." The key inquiry is whether the terms, read in context, connote structure to those of skill in the art.[90]

Defendants hinge their argument in large part on the holding in *Williamson* that "module," as used in the claims before the court, was a "nonce" term, but there is no rule that the use of the word "module" subjects a claim to 112(6).[91] Further, even where a word used in a claim term may be treated as a "nonce" word in certain contexts, means-plus-function treatment is not appropriate where the claim term itself sets forth structure, such as a defining prefix[92] or an algorithm. The Federal Circuit has held that the inclusion of a defining algorithm in a claim limitation constitutes structure and weighs against means-plus-function treatment.[93]

Turning to the specific claim language at issue, claim 9 is a "computer-readable medium" or *Beauregard*, claim, which is properly read as a method claim.[94] Even if claim 9 were not a *Beauregard* claim, each and every one of the claim terms Defendants assert to be appropriate in claim 9 recites specific structure. Claim 9 expressly sets forth that the instructions are "stored in…computer-readable medium." The instructions stored in the computer-readable medium are

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[88] *Zeroclick,* 891 F.3d at 1008 (Fed. Cir. 2018).

[89] See, e.g., *Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197 (Fed. Cir. 2010).

[90] *See, e.g., Lighting World, Inc. v. Birchwood Lighting, Inc.*, 382 F.3d 1354, 1360 (Fed. Cir. 2004).

[91] *See*, Section 2.8 above, p. 12, n. 49.

[92] *See, e.g., Apex Inc. v. Raritan Computer, Inc.*, 325 F.3d 1364, 1372 (Fed. Cir. 2003).

[93] *See, e.g., Apple, Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1299 (Fed. Cir. 2014).

[94] *See* Section 2.8, above, p. 11, n. 45.

formed into a "plurality of modules." Each of the modules, in turn, comprises a set of specific

processes.

Each of the processes within the modules is further defined by a specific algorithm set forth

in the claim for that process. As an example, the process for "facilitating selectively enabling the

activation of a second plurality of users" is: (a) performed by an authority and (b) allows selective

association of the first plurality of users with the second plurality of users. The process for

"determining which user…has the strongest connection" is: (a) determined based on time spent

within a set of spatial boundaries and (b) involves ranking the users according to status. This

pattern holds true for each of the processes recited in claim 9. The algorithms set forth in claim 9

themselves constitute subject matter that would be understood by one of skill in the art as structure.

Accordingly, the terms of claim 9 are not "means plus function" terms and are properly understood

according to their plain and ordinary meaning.

3.8   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"

As with the term "authority" above, Defendants argue that the inventor (a) acted as his own

lexicographer and (b) made a "clear and unmistakable" disclaimer of claim coverage with respect

to the term "networking."[95] As noted above, however, the case law is quite clear that the standards

for finding either lexicography or disavowal of claim scope are "exacting."[96] In order for a patentee

to have been deemed to act as his own lexicographer, it is necessary to show that the patentee must

"clearly set forth a definition of the disputed claim term," and "clearly express an intent to define

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[95] *Id. See also GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014).
[96] *GE Lighting Solutions*, 750 F.3d at 1309.

the term."[97] The patentee's lexicography must appear with "clarity, deliberateness, and precision."[98]

In order for an inventor to have made a clear and unmistakable disclaimer of subject matter, it is necessary to show that the patentee made statements in the specification or prosecution history amounting to a "clear and unmistakable" surrender.[99] "Where an applicant's statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable."[100]

In the present case, the patentee did not "clearly set forth a definition" of "networking" and did not "clearly express an intent to define" the term "networking."[101] There is no statement identified by Defendants which could be considered a "clear and unmistakable" surrender of subject matter.[102] Accordingly, as neither of the standards are met, the term "networking" is properly construed according to its plain and ordinary meaning.

4.0   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.

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[97] *GE Lighting Solutions*, 750 F.3d at 1309; see also *Thorner*, 669 F.3d at 1365.
[98] *Renishaw*, 158 F.3d at 1249.
[99] *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1329 (Fed. Cir. 2009).
[100] *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013).
[101] *GE Lighting Solutions*, 750 F.3d at 1309.
[102] *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1329 (Fed. Cir. 2009).

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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 18th day of June, 2021.

/s/ *Kenneth T. Emanuelson*
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