

# EXHIBIT B

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ICONFIND INC.,

Plaintiff,

v.

YAHOO! INC.,

Defendant.

NO. CIV. 09-109 WBS JFM

MEMORANDUM AND ORDER RE:  
MOTION FOR CLAIM CONSTRUCTION

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Iconfind Inc. ("Iconfind") seeks to improve access to the Internet's contents by organizing network or web pages through a standardized categorization system for the information contained on those pages. Plaintiff's U.S. Patent No. 7,181,459 B2 ("the '459 patent") categorizes network pages based on their content, including the copyright status of the material on the page and whether the pages contain commercial or non-commercial information. Plaintiff contends that Yahoo! Inc.'s ("Yahoo!") Flickr online photo management and sharing application infringes on the '459 patent by incorporating the Creative Commons license

1 into its website and allowing Flickr users to assign Creative  
2 Commons licenses to their photographs.

3 On November 5, 2009, defendant filed a motion for claim  
4 construction, and the court held a Markman<sup>1</sup> hearing on December  
5 7, 2009. After considering the parties' briefs and all other  
6 relevant documents, along with the parties' arguments at the  
7 Markman hearing, the court construes the disputed claims as set  
8 forth below.

9 I. Factual and Procedural Background

10 Iconfind is the owner of U.S. Patent No. 7,181,459 B2  
11 ("the '459 patent"), issued on February 20, 2007 and entitled  
12 "Method of Coding, Categorizing, and Retrieving Network Pages and  
13 Sites." (Mot. Claim Construction Ex. 1 [hereinafter cited as  
14 "'459 patent"].) The '459 patent describes a method for manually  
15 sorting network pages into a hierarchy of categories based on  
16 their content. Claim one of the patent states:

17 1. A computer implemented method of categorizing a  
18 network page, comprising:

19 Providing a list of categories, wherein said list  
20 of categories include a category for transacting  
21 business and a category for providing information, and  
22 wherein said list of categories include a category  
23 based on copyright status of material on a page;  
24 assigning said network page to one or more of said  
25 list of categories;  
26 providing a categorization label for the network  
27 page using the copyright status of material on the  
28 network page; and  
controlling usage of the network page using the  
categorization label and the copyright status of the  
network page.

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<sup>1</sup>Markman v. Westview Instruments, Inc., 517 U.S. 370, 372,  
116 S.Ct. 1384 (1996).

1 ('459 patent 12:24-38.<sup>2</sup>) Claim one of the '459 patent sorts  
2 network pages into three categories: (1) a category for providing  
3 information; (2) a category for transacting business; and (3) a  
4 category based on the copyright status of the material on the  
5 network page. Id. The network page is then assigned a label  
6 based on the copyright status of the material on the page. That  
7 label, along with the copyright status of the network age, are  
8 used to control the usage of the page, by, for example,  
9 permitting a user to limit his network pages solely to pages in  
10 particular categories. (9:40-12:12.)

11 The preferred embodiment of the invention describes a  
12 four-tiered categorization system, depicted in the '459 patent as  
13 Figure 1. ('459 patent Fig. 1.) The "first tier" divides  
14 network pages into whether they are for transacting business or  
15 providing information. (4:60-65.) The "second tier" divides the  
16 pages according to subject matter. (5:10-28.) The "third tier"  
17 divides the pages according to the types of files associated with  
18 the network page. (5:29-47.) Another tier divides the pages  
19 according to the copyright status of the material on the network  
20 page. (5:48-58.)

21 In the preferred embodiment, a designer of a network  
22 page manually assigns the page to appropriate categories by  
23 applying a "categorization code" for each category to which the  
24 page is assigned. (6:62-65.) The network designer then combines  
25 various "codes" to form a "categorization label" that is placed  
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27 <sup>2</sup>The format #:## signifies the column and line number of the  
28 '459 patent. Subsequent references to content within the '459  
patent are made solely using this numerical format.

1 on a network page. (7:27-47.) Search engines can then read the  
2 categorization label and determine how the page is categorized.

3 During the prosecution of the '459 patent, the  
4 inventors repeatedly had their patent rejected due to the prior  
5 art that disclosed categorizing web pages. (Mot. Claim  
6 Construction Ex. 2 at IF001485-90.) The inventors eventually  
7 narrowed the claims of their patent to claim a categorization  
8 system which included at least the three categories of  
9 transacting business, providing information, and copyright  
10 status.

11 Yahoo!'s Flickr is an online photo management and  
12 sharing application. (Mot. Claim Construction 6.) Flickr users  
13 upload digital photos to the Flickr website for storage and  
14 sharing. Id. Users can make their photos private or visible to  
15 others. Id. Photographs that are public may be browsed or  
16 searched by various "tags" that may be attached to them. Id.  
17 Flickr also incorporates the Creative Commons license system  
18 whereby users can select to grant others the right to use their  
19 photographs with certain restrictions. Id. Creative Commons is  
20 a non-profit organization that provides free licenses to users to  
21 mark their creative work with the usage restrictions they want  
22 their work to carry. Id. Flickr users have the option to "tag"  
23 their photographs with a Creative Commons license.

24 On January 13, 2009, plaintiff filed a complaint with  
25 this court alleging that the Creative Commons license on Yahoo!'s  
26 Flickr site infringes the '459 patent. Presently before the  
27 court is defendant's motion for claim construction pursuant to  
28

1 Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996).

2 II. Discussion

3 A. Legal Standard

4 The court, not the jury, must determine the meaning and  
5 scope of patent terms. Markman v. Westview Instruments, Inc., 52  
6 F.3d 967, 979 (Fed. Cir. 1995), aff'd., 517 U.S. 370, 372, 116  
7 S.Ct. 1384 (1996). When construing disputed claim terms, the  
8 court often looks to both intrinsic and extrinsic evidence.  
9 Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.  
10 Cir. 1996).

11 Intrinsic evidence includes the language of the claims,  
12 specification, and prosecution history. Vitronics, 90 F.3d at  
13 1582. The language of a patent's claims are "generally given  
14 their ordinary and customary meaning," which is "the meaning that  
15 the term would have to a person of ordinary skill in the art in  
16 question . . . as of the [patent's] effective filing date."  
17 Phillips v. AWH Corp., 415 F.3d 1303, 1313 (Fed. Cir. 2005).

18 "Importantly, the person of ordinary skill in the art is deemed  
19 to read the claim term not only in the context of the particular  
20 claim in which the disputed term appears, but in the context of  
21 the entire patent, including the specification." Id.

22 The specification "is the single best guide to the  
23 meaning of a disputed term." Vitronics, 90 F.3d at 1582. The  
24 specification can provide further guidance on the meaning of  
25 terms in the claims by, for example, (1) revealing a "special  
26 definition given to a claim term by the patentee that differs  
27 from the meaning it would otherwise possess," Phillips, 415 F.3d

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1 at 1316, (2) revealing an "intentional disclaimer, or disavowal,  
2 of claim scope by the inventor," Id., or (3) defining a term by  
3 implication, "such that the meaning may be found in or  
4 ascertained by a reading of the patent documents," Novartis  
5 Pharms. Corp. v. Abbott Labs., 375 F.3d 1328, 1334-35 (Fed. Cir.  
6 2004). Limitations from the preferred embodiments or specific  
7 examples in the specification, however, cannot be read into the  
8 claim. Anchor Wall Sys. v. Rockwood Retaining Walls, Inc., 340  
9 F.3d 1298, 1306 (Fed. Cir. 2003).

10           The patent's prosecution history "can often inform the  
11 meaning of the claim language by demonstrating how the inventor  
12 understood the invention and whether the inventor limited the  
13 invention in the course of prosecution, making the claim scope  
14 narrower than it would otherwise be." Phillips, 415 F.3d at  
15 1317.

16           Extrinsic evidence "consists of all evidence external  
17 to the patent and prosecution history, including expert and  
18 inventor testimony, dictionaries, and learned treatises."  
19 Markman, 52 F.3d at 980. When used, extrinsic evidence cannot  
20 "vary or contradict" claim language, Vitronics, 90 F.3d at 1584,  
21 but it can be useful "for a variety of purposes, such as to  
22 provide background . . . [and] to ensure that the court's  
23 understanding of the technical aspects of the patent is  
24 consistent with that of a person of skill in the art, or to  
25 establish that a particular term in the patent or the prior art  
26 has a particular meaning in the pertinent field." Phillips, 415  
27 F.3d at 1318.

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1 B. Disputed Terms

2 Viewing the disputed terms from the perspective of a  
3 person of ordinary skill in the art at the time of the invention,  
4 the court adopts the constructions set forth below.

5 The five disputed terms appear in boldface below.<sup>3</sup>

6 1. A computer implemented method of categorizing a  
7 **network page**, comprising:

8 providing a list of categories, wherein said  
9 list of categories include a **category for**  
10 **transacting business** and a **category for**  
11 **providing information**, and wherein said list  
12 of categories include a category based on  
13 copyright status of material on a page;

14 . . . ;

15 providing a **categorization label** for the  
16 network page using the copyright status of  
17 the material on the network page;

18 . . . .

19 19. The method of claim 1, further comprising providing  
20 a **categorization code** that can be used to label the  
21 page with the **categorization label** that indicates the  
22 categories to which the page is assigned.

23 (12:24-38, 13:40-43.)

24 1. Network Page

25 The parties' proposed constructions are as follows:

26 Plaintiff

27 Page on the Internet, private  
28 corporate network, intranet,  
local area network or other  
network.

Defendant

All files, data, and  
information presented when a  
network address is accessed,  
including any text, audio,  
advertising, images, files,  
graphics, or graphical user  
interface.

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<sup>3</sup>These terms appear in independent claims 1, 30, and 31, and dependent claims 19-27 of the '459 patent.



1 The parties' dispute over this term revolves around whether the  
2 term "page" needs to be separately defined. The parties do not  
3 dispute the meaning of "network." The patent claims clearly  
4 distinguish "network page" from "material on a page" and  
5 "material on the network page." (14:15-50.) At oral argument,  
6 counsel for the plaintiff conceded that an image on a "page" did  
7 not constitute a "page." The parties then agreed that the term  
8 "page" did not need to be further defined.

9 Therefore, the term "page" needs no further  
10 construction, and the court concludes that the term "network  
11 page" means **"Page on the Internet, private corporate network,  
12 intranet, local area network or other network."**

13 2. Category for Transacting Business

14 The parties' proposed constructions are as follows:

15 <u>Plaintiff</u>	<u>Defendant</u>
16 Category for (1) e-commerce 17 pages, which provide users 18 with the ability to conduct 19 online purchases, sales, 20 leases, or other financial 21 transactions, (2) pages that 22 may be involved in transacting 23 business, but do not enable 24 the user to conduct the 25 transaction on-line, and (3) 26 other pages that contain 27 commercial information.	A category for network pages that have as a primary purpose transacting business. In the alternative, this term is indefinite.

24 Plaintiff's proposed construction closely mirrors the preferred  
25 embodiment set out in the specification of the '459 patent, which  
26 states that:

27 Web pages involved in transacting business include e-  
28 commerce pages, which provide users with the ability to  
conduct online purchases, sales, leases, or other

1 financial transactions, pages that may be involved in  
2 transacting business, but do not enable the user to  
3 conduct the transaction on-line, and other pages that  
4 contain commercial information.

4 (4:62-5:4). The defendant argues that the plaintiff is  
5 impermissibly attempting to turn the description of the preferred  
6 embodiment into a definition, and that the term "commercial  
7 information" is ambiguous.

8 As to the former claim, criteria outlined in the  
9 preferred embodiment do not ordinarily serve to limit the claims  
10 of the patent to those criteria. See Anchor Wall Sys., 340 F.3d  
11 at 1306. Yet the claim terms can be defined by what is set forth  
12 in the preferred embodiment as long as that limitation properly  
13 describes the whole invention. See Honeywell Intern., Inc. v.  
14 ITT Indus., Inc., 452 F.3d 1312, 1318 (Fed. Cir. 2006);  
15 Vitronics, 90 F.3d at 1582 ("Although words in a claim are  
16 generally given their ordinary and customary meaning, a patentee  
17 may choose to be his own lexicographer and use terms in a manner  
18 other than their ordinary meaning, as long as the special  
19 definition of the term is clearly stated in the patent  
20 specification or file history."

21 The specification "acts as a dictionary when it  
22 expressly defines terms used in the claims or when it defines  
23 terms by implication"); Irdeto Access, Inc. v. Echostar Satellite  
24 Corp., 383 F.3d 1295, 1300 (Fed. Cir. 2004) ("Even when guidance  
25 is not provided in explicit definitional format, the  
26 specification may define claim terms by implication such that the  
27 meaning may be found in or ascertained by a reading of the patent  
28 documents.") (citations omitted); see also Phillips v. AWH Corp.,

1 415 F.3d 1303, 1316 (Fed Cir. 2005) (“[T]he specification may  
2 reveal an intentional disclaimer, or disavowal, of claim scope by  
3 the inventor . . . . In that instance [], the inventor has  
4 dictated the correct claim scope, and the inventor’s intention,  
5 as expressed in the specification, is regarded as dispositive.”).  
6 Often, it will be clear upon reading the specification in the  
7 context of its purpose--which is to teach and enable those of  
8 skill in the art to make and use the invention and to provide a  
9 best mode for so doing--whether the patentee is setting out  
10 specific examples of how to practice the invention or “whether  
11 the patentee intends for the claims and the embodiments in the  
12 specification to be strictly coextensive.” Phillips, 415 F.3d at  
13 1323.

14           In Honeywell International, the Federal Circuit found  
15 that the preferred embodiment of a fuel filter was the only  
16 embodiment of the invention because it referred to the fuel  
17 filter as “this invention” on multiple occasions in the  
18 specification. Id. (“The public is entitled to take the patentee  
19 at his word and the word was that the invention is a fuel  
20 filter.”). The preferred embodiment of “category for transacting  
21 business” in this case does not expressly define the invention by  
22 its terms. Here, the preferred embodiment states that “web pages  
23 involved in transacting business **include** [the three types of  
24 pages listed by the plaintiff as its proposed construction.]”  
25 (4:62-5:4) (emphasis added). Generally, this use of the word  
26 “include” is meant to convey a minimum rather than a maximum.  
27 See Black’s Law Dictionary 831 (9th ed. 2009) (“To contain as a  
28 part of something. The participle including typically indicates

1 a partial list." ). By the preferred embodiment's own language,  
2 it does not purport to limit categories for transacting business  
3 to the list of three types of web pages offered by the plaintiff  
4 as its proposed construction.

5           There is further support in the specification that the  
6 use of the word "include" was meant to be illustrative rather  
7 than definitional of the term "category for transacting  
8 business." The word "include" is used similarly in the preferred  
9 embodiment of another disputed term, "category for providing  
10 information." (5:4-6; see infra.) Immediately after the  
11 purported definition of "category for transacting business," the  
12 specification goes on to state: "Web pages involved in providing  
13 information **include** pages that contain articles, journals,  
14 publications, or other non-commercial materials." (5:4-6)  
15 (emphasis added).

16           The specification later, however, provides an example  
17 of how one would categorize the fictional website www.abcde.com,  
18 which had "as its purpose" the teaching of the alphabet, as  
19 providing information. (8:31-32.) This purposeful metric for  
20 categorizing pages as providing information is lacking from the  
21 alleged definition of the term "category of providing  
22 information," indicating that the preferred embodiment is not the  
23 only embodiment of that category. Nor do other uses of the word  
24 "include" in the specification imply that what follows is  
25 exclusive. (See '459 patent 4-5.) The preferred embodiment,  
26 therefore, does not clearly define the term "category for  
27 transacting business" as exclusive to the examples listed and  
28 accordingly the court will not limit the scope of the patent

1 claim to those examples.

2           The defendant's proposed construction imports the term  
3 "primary purpose," which the plaintiff argues limits the term to  
4 categories with one "primary purpose" when the specification is  
5 clear that a web page can be assigned to both the transacting  
6 business and providing information categories. (5:7-9.) Such  
7 pages, asserts plaintiff, would therefore have two "primary  
8 purposes" according to the defendant's logic. The dictionary  
9 definition of the adjective "primary" applicable here is the  
10 secondary definition, "something that stands first in rank,  
11 importance, or value." Merriam-Webster's Collegiate Dictionary  
12 986 (11th ed. 2003). This definition of "primary" appears to  
13 exclude the possibility of multiple "primary purposes," and would  
14 exclude the preferred embodiment of the invention which has  
15 network pages categorized as both for transacting business and  
16 for providing information.

17           Plaintiff further asserts that defendant's proposed  
18 construction excludes the preferred embodiments of e-commerce  
19 pages and pages that contain commercial information. Concerns  
20 regarding the first embodiment are without merit, as "transacting  
21 business" would be thought to include web pages that allow users  
22 to complete online commercial and financial transactions. The  
23 second embodiment of pages that merely "contain commercial  
24 information" might be excluded if defendant's "primary purpose"  
25 construction is adopted. While the other two preferred  
26 embodiments would be included in the "primary purpose" language  
27 proposed by the defendant, the defendant's proposal would seem to  
28 exclude pages that merely "contain" commercial information but

1 whose "primary purpose" remained the providing non-commercial  
2 information. Therefore, the defendant's proposed construction  
3 must be rejected.

4           Since the plaintiff and defendant both have proposed  
5 constructions that do not perfectly align with the claims and  
6 specifications of the patent, the court construes the term as: A  
7 category for network pages that have as a purpose transacting  
8 business. At oral argument both parties indicated that, while  
9 they each preferred their own proposed construction, this  
10 construction could be satisfactory. This definition is broad  
11 enough to encompass the preferred embodiment and also takes into  
12 account the purposeful analysis that the patent specification has  
13 indicated is also appropriate. Furthermore, this construction  
14 recognizes that for the patent to function the term "category for  
15 transacting business" must both be sufficiently definite to be  
16 meaningful to network page creators seeking to categorize their  
17 network pages, and be flexible enough to allow them to categorize  
18 their network pages as they best see fit. This construction also  
19 avoids the term "commercial information" proposed by plaintiff  
20 and challenged by defendant as impermissibly indefinite.

21           Therefore, the term "category for transacting business"  
22 means **"A category for network pages that have as a purpose  
23 transacting business."**

24           3. Category for Providing Information

25           The parties' proposed constructions are as follows:

26 Plaintiff

27 Category for pages that  
28 contain articles, journals,  
publications, or other non-

Defendant

A category for network pages  
that have as a primary purpose  
the provision of information,

1 commercial materials.

for example, network pages  
2 that contain articles,  
journals, or publications.  
3 In the alternative, this term  
is indefinite.

4  
5 Plaintiff's proposed construction closely mirrors the  
6 preferred embodiment set out in the specification of the '459  
7 patent, which states that: "Web pages involved in providing  
8 information include pages that contain articles, journals,  
9 publications, or other non-commercial materials." (5:4-6.) As  
10 discussed above, the use of the word "include" in the preferred  
11 embodiment, and the example of the fictional website  
12 www.abcde.com, which had "as its purpose" the teaching of the  
13 alphabet, as providing information (8:31-32), indicate that the  
14 preferred embodiment is not the only embodiment of the "category  
15 for providing information." Plaintiff's proposed construction,  
16 therefore, improperly limits the claim to the preferred  
17 embodiment.

18 As also discussed above, defendant's importation of the  
19 term "primary purpose" likewise poses the problem of not aligning  
20 with the preferred embodiment that allows for network pages to be  
21 categorized as both providing information and transacting  
22 business. Thus, the court proposes a modified construction: A  
23 category for network pages that have as a purpose the provision  
24 of information, for example, network pages that contain articles,  
25 journals, or publications. This construction encompasses the  
26 preferred embodiment and allows for other embodiments of the  
27 invention, while eliminating the potentially troublesome  
28 commercial/non-commercial distinction present in the plaintiff's

1 proposed construction.

2 Defendants argue that any network page provides some  
3 form of information, and that the term "category for providing  
4 information" is indefinite so to render the patent invalid.  
5 Because every network page theoretically "provides information,"  
6 defendant argues that this category could include every network  
7 page every made. Patents enjoy a presumption of validity because  
8 they have gone through the prosecution process with the Patent  
9 Office, and defendants offer no expert testimony or evidence that  
10 a person with ordinary skill in the art would not be able to  
11 determine the scope of the patents claims. This argument is  
12 therefore rejected.

13 Therefore, the term "category for providing  
14 information" means **"A category for network pages that have as a  
15 purpose the provision of information, for example, network pages  
16 that contain articles, journals, or publications."**

17 4. Categorization Label

18 The parties' proposed constructions are as follows:

19 <u>Plaintiff</u>	<u>Defendant</u>
20 Tag indicating the category or 21 categories to which a page is 22 assigned.	The complete code string 23 representing all the 24 categories to which a network 25 page is assigned.

24 Defendant's proposed construction clearly is contrary  
25 to the preferred embodiment of the invention with respect to the  
26 words "complete" and "all." The specification states that: "The  
27 categorization label **preferably** consists of the indicia for all  
28 of the categories to which the page is assigned." (7:3-4)



1 (emphasis added). According to the preferred embodiment,  
2 therefore, it is not necessary that the categorization label  
3 include the indicia representing every category to which the page  
4 has been assigned. Plaintiffs also point to dependent claim 22,  
5 which states: "The method of claim 20, wherein said  
6 categorization label includes the indicia for each category to  
7 which a page is assigned." (13:48-50.) Furthermore, independent  
8 claim 30, which includes both terms "categorization code" and  
9 "categorization label," makes clear that the categorization label  
10 need not contain the indicia of all the categories to which a  
11 network page is assigned:

12 30. A computer implemented method for categorizing a  
13 network page, comprising:

14 providing a list of categories, wherein said list of  
15 categories include a category for transacting business  
16 and a category for providing information, and wherein  
17 said list of categories include a plurality of  
18 categories based on the copyright status of material on  
19 a page;

20 providing a **categorization code** for labeling the  
21 network page with a **categorization label**, wherein said  
22 **categorization label** indicates a **set** of categories and  
23 subcategories to which the network page is assigned,  
24 and wherein said **categorization label** indicates the  
25 copyright status of material on the network page; and

26 controlling usage of the network page using the  
27 **categorization label** and the copyright status of the  
28 network page.

(14:17-33) (emphasis added.)

Plaintiff argues that the defendant's proposed  
construction also improperly reads "categorization code" and  
"code string" into independent claim 1 of the '459 patent.  
Specifically:

1. A computer implemented method of categorizing a  
network page, comprising:

1 Providing a list of categories, wherein said list  
2 of categories include a category for transacting  
3 business and a category for providing information, and  
wherein said list of categories include a category  
based on copyright status of material on a page;

4 assigning said network page to one or more of said  
5 list of categories;

6 providing a **categorization label** for the network  
7 page using the copyright status of material on the  
network page; and

8 controlling usage of the network page using the  
9 **categorization label** and the copyright status of the  
network page.

10 19. The method of claim 1, further comprising providing  
11 a **categorization code** that can be used to label the  
page with the **categorization label** that indicates the  
categories to which the page is assigned.

12 ('459 patent 12-13) (emphasis added.) "[T]he presence of a  
13 dependent claim that adds a particular limitation gives rise to a  
14 presumption that the limitation in question is not present in the  
15 independent claim." Phillips, 415 F.3d at 1314-15. Dependent  
16 claim 19 adds the limitation of "further comprising a  
17 categorization code," which presumably is not contained in  
18 independent claim 1. While independent claim 30 includes both  
19 "categorization label" and "categorization code," independent  
20 claims 1 and 31 do not require a "categorization code." The  
21 court will not import a dependent claim into independent claim 1  
22 by importing the term "categorization code" to the term  
23 "categorization label."

24 Furthermore, the language of the specification, which  
25 was quoted only in part by the defendant, states that: The  
26 indicia for the categories are **preferably** placed in an unbroken  
27 code string in the following order: first tier, second tier,  
28

1 third tier, and copyright-status categories." (7:15-18)  
2 (emphasis added). The specification further states that: "**An**  
3 **example** of such a categorization label is a single, simple  
4 character string consisting of the two-letter or two-numerical  
5 indicia for all of the categories to which the page is assigned."  
6 (7:5-8) (emphasis added). It does not appear, therefore, that  
7 the preferred embodiment is the only embodiment of the  
8 categorization label, and the court will not interpret the term  
9 "categorization label" to require a "code string."

10 Finally, because the patent does not limit its claims  
11 to placing only one categorization label on a network page, it is  
12 clear that each label does not need to include every category to  
13 which a page is assigned in order for the patent to function. A  
14 network page creator could assign a network page two  
15 categorization labels, each indicating only some of the  
16 categories to which a page is assigned. Furthermore, the  
17 specification provides that a network page designer can  
18 communicate the categories to which a page is assigned directly  
19 to search engines rather than include those categories in the  
20 categorization label. (6:50-58.) This clearly contemplates that  
21 a categorization label might not include every category to which  
22 a network page is assigned.

23 Defendants object to plaintiff's including the word  
24 "tag" in their proposed construction of the term "categorization  
25 label." While the word "tag" may be a term of art, "a patentee  
26 may choose to be his own lexicographer and use terms in a manner  
27 other than their ordinary meaning, as long as the special  
28 definition of the term is clearly stated in the patent

1 specification or file history." Honeywell Intern., Inc., 452  
2 F.3d at 1318. In the specification, the patent clearly uses the  
3 words "tag" and "label" and "mark" in the verb form  
4 interchangeably. (6:50-53, 6:63-65.) The construction suggested  
5 by plaintiff, however, uses the word "tag" as a noun, which is  
6 not supported by the patent language as being synonymous with a  
7 "label." Additionally, the preferred embodiment somewhat  
8 confusingly also states that "The method also includes the step  
9 of providing the creator with a categorization code that can be  
10 used to tag or label each page or site." (6:63-65.)  
11 Substituting the word "tag" for "label" in the definition adds  
12 nothing to enlighten the jury. To the contrary, it would just  
13 add another word which arguable would have to be defined. Since  
14 the plaintiff asserts that the patent uses the terms "tag" and  
15 "label" interchangeably, this construction provides the same  
16 meaning while avoiding possible confusion. Furthermore, this  
17 construction makes clear that the label need not include every  
18 category to which a page is assigned.

19 Therefore, the term "categorization label" means "**Label**  
20 **indicating a category or categories to which a page is assigned.**"

21 5. Categorization Code

22 The parties' proposed constructions are as follows:

23 Plaintiff

24 System of characters or  
25 symbols that represent  
categories.

Defendant

A code representing a category  
to which a network page is or  
could be assigned.

26 The parties dispute whether the term "categorization code" refers  
27 to an entire "system" of codes or to the individual codes that  
28 correspond to each category. The term "categorization code"

1 appears in dependent claims 19, 20 25, and 30:

2  
3 19. The method of claim 1, further comprising providing  
4 a **categorization code** that can be used to label the  
5 page with the categorization label that indicates the  
6 categories to which the page is assigned.

7  
8 20. The method of claim 19, wherein said **categorization**  
9 **code** comprises an indicium for each of said categories.

10  
11 25. The method of claim 19, wherein said categorization  
12 label further includes an identifier to indicate that  
13 said label is part of said **categorization code**.

14  
15 30. A computer implemented method for categorizing a  
16 network page, comprising:

17 providing a list of categories, wherein said list  
18 of categories include a category for transacting  
19 business and a category for providing information, and  
20 wherein said list of categories include a plurality of  
21 categories based on the copyright status of material on  
22 a page;

23 providing a **categorization code** for labeling the  
24 network page with a categorization label, wherein said  
25 categorization label indicates a set of categories and  
26 subcategories to which the network page is assigned,  
27 and wherein said categorization label indicates the  
28 copyright status of material on the network page; and

controlling usage of the network page using the  
categorization label and the copyright status of the  
network page.

20 (13:40-45; 14:3-5; 14:16-33) (emphasis added.) The language of a  
21 patent's claims are "generally given their ordinary and customary  
22 meaning." Phillips, 415 F.3d at 1313. Furthermore, the claim  
23 term is read in the context of both the particular claim in which  
24 it appears and in the context of the entire patent. Id.

25 These claims reveal a system of characters that  
26 represent categories to which network pages can be assigned.  
27 Specifically, dependent claim 20 refers to a categorization code  
28 as comprising "an indicium for each of said categories" to which

1 a page is assigned. (13:44-45.) For claim 20 to make sense, the  
2 term "categorization code" must contemplate a system that can  
3 comprise the categorical indicia. Likewise, dependent claim 25  
4 refers to an "identifier" to indicate that the categorization  
5 label is part of the categorization code. Defendant's proposed  
6 construction is nonsensical when posed along side claim 25. If a  
7 "categorization code" is merely a two-letter indicium of a  
8 particular category to which a page has been labeled, then the  
9 categorization code should constitute part of the categorization  
10 label rather than the label constituting a part of the code. The  
11 specification provides further light for interpreting claim 25:

12       The categorization label for a page preferably also  
13       includes an identifier, such as a combination of  
14       several characters or symbols, to indicate that the  
15       characters or symbols that follow are part of a  
16       categorization code system.

17 (7:8-11.) This portion of the preferred embodiment directly  
18 speaks to dependent claim 25 of the specification, and uses the  
19 term "categorization code system" where the claim uses  
20 "categorization code." According to the patent, the terms are  
21 used interchangeably, and is further evidence that the inventors  
22 intended the term "categorization code" to mean a code system.

23       Defendants cite the example of coding a pornographic web  
24 page, where the patent states: "The categorization label would be  
25 'coexvimu,' which indicates: Commerce (co); Explicit (ex); Visual  
26 (vi); and Multimedia (mu). The Explicit category 42, identified  
27 by the 'X' icon and the 'ex' code, . . . ." (7:48-54.) While  
28 the specification also uses the term "code" when referring to  
individual category symbols, this is not in conflict with  
recognizing that the term "categorization code" refers to the

1 system of as a whole. The patent repeatedly refers to these  
2 individual codes as "indicia":

3 The list of categories includes at least one different  
4 indicium for each category. The indicium is preferably  
5 a universal symbol or icon that is not associated with  
6 any one language, but it may also include a combination  
7 of letters, numerals, or other characters, or symbols.  
8 The indicia preferably used are universal icons and  
9 two-letter or two-numeral indicia, as shown in FIG. 1.  
10 Thus, the indicia for commerce are "co" and the "\$"  
11 symbol, while the indicium for "Public Domain" is "01."

12 (6:3-11.)

13 The preferred embodiment further states: "The method  
14 also includes the step of providing the creator with a  
15 categorization code that can be used to tag or label each page or  
16 site . . . . and is preferably the indicia shown in FIG 1."

17 (6:63-7:1.) Figure 1 of the '459 patent displays the three  
18 "tiers" of categories and the fourth category comprising  
19 copyright status, and the various categories within the tiers.  
20 Accordingly, "categorization code" as used in this instance  
21 cannot constitute a singular code or category, but must represent  
22 the entire system of codes displayed in Figure 1 of the '459  
23 patent.

24 Defendant also points to portions of the provisional  
25 patent applications which referred to the term "categorization  
26 code" as both a system and as the individual string of codes as  
27 evidence that the term could mean an individual code. (E.g.,  
28 Yahoo! Reply Decl. Kevin A. Smith Ex. 15 Fig. 1 ("The iics  
copyright code can simply be typed in at the end of the  
categorization code . . . .").) The provisional applications  
that the defendant points to, however, did not use the term  
"categorization label." Rather, they used the term

1 "categorization code" to also mean what is now defined as the  
2 "categorization label." While the provisional patent  
3 applications may have used the term "categorization code" to  
4 express multiple meanings, the '459 patent claims and  
5 specification are consistent in their usage of the term.

6 Finally, the preferred embodiment generally speaks  
7 about the "categorization code" as something that the network  
8 page creator "uses" to assign categorization labels to network  
9 pages. (See 6:63-65; 7:1-3; 7:12-15.) This conception of  
10 "categorization code" aligns with a systemic view of the term,  
11 and is incompatible with a construction that limits the term to  
12 one particular set of characters or symbols in code.

13 Therefore, the term **"categorization code" means "System**  
14 **of characters or symbols that represent categories."**

15 The Court accordingly construes the claims as set forth  
16 above.

17 IT IS SO ORDERED.

18 DATED: December 14, 2009

19 

20 WILLIAM B. SHUBB  
21 UNITED STATES DISTRICT JUDGE  
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24  
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28