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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Iconfind, Inc.,	)	
	)	2:11-cv-0319-GEB-JFM
Plaintiff,	)	
	)	
v.	)	<u>CLAIM CONSTRUCTION ORDER</u>
	)	
Google, Inc.,	)	
	)	
Defendant.	)	
_____	)	

This order issues following consideration of each party's brief and argument concerning the meaning of certain terms and phrases in Plaintiff Iconfind, Inc.'s ("Iconfind") U.S. Patent No. 7,181,459 ("the '459 Patent"). The '459 Patent is titled "Method of Coding, Categorizing, and Retrieving Network Pages and Sites." The background section of the '459 Patent states: "The present invention relates generally to methods for categorizing and searching for information on a network and, more specifically, to categorizing and searching Web pages on the Internet." ('459 Patent 1:22-25.) Iconfind alleges in its complaint that Defendant Google, Inc. ("Google") infringes the '459 Patent by its "use, ownership and operation of websites in which it incorporates and facilitates Creative Commons licenses, including but not limited to Google Knol, Google Books and Google Picasa."

The parties dispute the meaning of the bolded terms and phrases below in independent claims 1, 30, 31 and dependent claim 6 of the '459 Patent:

1 Claim 1

2 A computer implemented method of categorizing  
3 a **network page**, comprising:  
4 providing a list of categories, wherein said list  
5 of categories include a category for transacting  
6 business and a category for providing information,  
7 and wherein said list of categories include a  
8 category based on copyright status of material on a  
9 page;  
10 **assigning said network page to one or more of said  
11 list of categories;**  
12 providing a categorization label for the **network  
13 page** using the copyright status of material on the  
14 **network page;** and  
15 controlling usage of the **network page** using the  
16 categorization label and the copyright status of  
17 the network page.

10 Claim 6

11 The method of claim 1, wherein said plurality  
12 of categories based on the copyright status of  
13 material on a page comprise **categories related to  
14 public domain, fair use only, use with attribution,  
15 and permission of copyright owner needed.**

14 Claim 30

15 A computer implemented method for categorizing  
16 a **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,  
20 and wherein said list of categories include a  
21 plurality of categories based on the copyright  
22 status of material on a page;  
23 providing a categorization code for labeling the  
24 **network page** with a categorization label, wherein  
25 said categorization label indicates **a set of  
26 categories and subcategories to which the network  
27 page is assigned,** and wherein said categorization  
28 label indicates the 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.

25 Claim 31

26 A computer implemented method of categorizing  
27 a **network page**, comprising:  
28 providing a list of categories, wherein said  
categories include a category based on the  
copyright status of material on a page, and wherein  
the copyright status comprises **categories related  
to public domain, fair use only, use with**

1 attribution, and permission of copyright owner  
2 needed;  
3 assigning said network page to one or more of a  
4 plurality of said list of categories;  
5 providing a categorization label for the **network**  
6 **page** using the copyright status of material on the  
7 **network page**; and  
8 controlling usage of the network page using the  
9 categorization label and the copyright status of  
10 the **network page**.

11 "A court construing a patent claim seeks to accord a claim the  
12 meaning it would have to a person of ordinary skill in the art at the  
13 time of the invention." Innova/Pure Water, Inc. v. Safari Water  
14 Filtration Systems, Inc., 381 F.3d 1111, 1116 (Fed. Cir. 2004). "Such  
15 person is deemed to read the words used in the patent documents with an  
16 understanding of their meaning in the field, and to have knowledge of  
17 any special meaning and usage in the field." Multiform Desiccants, Inc.  
18 v. Medzam Ltd., 133 F.3d 1473, 1477 (Fed. Cir. 1998).

19 "[I]n interpreting [a claim term], the court should look first  
20 to the intrinsic evidence of record, i.e., the patent itself, including  
21 the claims, the specification and, if in evidence, the prosecution  
22 history." Vitronics Corp. v. Conceptronic, 90 F.3d 1576, 1582 (Fed. Cir.  
23 1996). "[T]he claims themselves provide substantial guidance as to the  
24 meaning of particular claim terms . . . [and] the context in which a  
25 claim term is used in the asserted claim can be highly instructive."  
26 Phillips v. AWH Corp., 415 F.3d 1303, 1314 (Fed Cir. 2005) (internal  
27 citations omitted). "[T]he specification is always highly relevant to  
28 the claim construction analysis[;] . . . it is the single best guide to  
the meaning of a disputed term." Vitronics, 90 F.3d at 1582.

#### 26 A. "Network Page"

27 The parties propose different constructions for the meaning of  
28 the words "network page." Iconfind argues that the following

1 construction of network page, which was adopted in Iconfind, Inc. v.  
2 Yahoo!, Inc., Case No. 09-0109, 2009 WL 8454648, at \*4 (E.D. Cal. Dec.  
3 14, 2009) ("Yahoo!"), should be adopted in this case: "Page on the  
4 Internet, private corporate network, intranet, local area network, or  
5 other network." (Iconfind Br. 14:12-14.)

6 Google argues this proposed construction of "network page"  
7 fails to "capture[] an important concession made by [Iconfind] in  
8 [Yahoo!]"; specifically, the Yahoo! court "determined that 'page' did  
9 not require construction" since Iconfind's counsel conceded during the  
10 claim construction hearing in Yahoo! "that an image on a 'page' did not  
11 constitute a 'page.'" (Google Br. 13:5-6.) Google argues that the claims  
12 and specification in the '459 Patent support the addition of the  
13 following limitation to the Yahoo! court's construction of "network  
14 page": "wherein an image on a page does not constitute a page."

15 Claim 1 of the '459 Patent concerns: "A . . . method of  
16 categorizing a network page" "wherein . . . categories include a  
17 category based on copyright status of material on a page." ('459 Patent  
18 12:24-30.) Independent claims 30 and 31 also describe methods for  
19 categorizing a "network page" which include the "copyright status of  
20 material on a page." (14:22-23, 38-39.)

21 The specification states: "Pages on the Internet are  
22 identifiable by unique addresses and include both Web sites and Web  
23 pages." ('459 Patent 4:48-49.) The terms "page" and "Web page" are used  
24 interchangeably throughout the specification; as evidenced by the  
25 following example under the heading "Description of the Preferred  
26 Embodiments":

27 First tier [] is a division into one or both of two  
28 major categories: **pages** that are involved in  
transacting business and pages that are involved in  
providing information. . . . Some **Web pages** may be

1 involved in both transacting business and providing  
2 information and thereby fall within both the  
categories of "Commerce" and "Information."

3 ('459 Patent 4:60-67, 5:1-9 (emphasis added).) A person of ordinary  
4 skill in the art reading the '459 Patent would understand that a "page"  
5 is an address on a network, for example a Web page.

6 In addition, the specification discusses "a hierarchy of three  
7 tiers . . . to categorize, and to search for information located on, Web  
8 pages." ('459 Patent 4:50-53.) The specification states the "[t]hird  
9 tier [] is a division into one or more categories according to the type  
10 of files associated with a Web page . . . including . . . graphics[.]"  
11 ('459 Patent 5:30-31.) The specification also states that the "Visual"  
12 category within this tier "includes files containing pictures[.]" ('459  
13 Patent 5:39.) A person of ordinary skill in the art reading the '459  
14 Patent would understand that the third tier of categories concerns the  
15 type of files on a page, and consequently that a page contains files,  
16 which may include picture files.

17 Google's proposed limitation is supported by the intrinsic  
18 record since a person of ordinary skill in the art reading the '459  
19 Patent would understand that an image on a page is not a page.  
20 Therefore, the following construction of network page is adopted: An  
21 address on the Internet, private corporate network, intranet, local area  
22 network or other network, for example, a Web page; wherein an image on  
23 a page is not a page.

24 **B. "Assigning said network page to one or more of a plurality of said**  
25 **list of categories" and "a set of categories and subcategories to**  
26 **which the network page is assigned"**

27 The parties dispute the meaning of the following phrases:  
28 "assigning said network page to one or more of a plurality of said list  
of categories"; and, "a set of categories and subcategories to which the

1 network page is assigned." Iconfind argues these phrases "should be  
2 given [the] plain and ordinary meaning in the context of the intrinsic  
3 record as understood by a person of skill at the time of the invention."  
4 (Iconfind Br. 19:9-12.) Google seeks to limit each phrase by  
5 "requir[ing] that the assignment be performed by the creator[.]" (Google  
6 Br. 16:8-9.)

7           The specification states the invention "includes the steps of  
8 providing the creator with a list of categories and providing the  
9 creator an opportunity to assign the page to one or more of the  
10 categories." ('459 Patent 5:64-67.) The specification describes the  
11 assignment step as follows: "The creator of a Web page may assign the  
12 Web page to any number or combination of the categories of three tiers  
13 . . . and one of the copyright-status categories . . . . The creator may  
14 also decide not to assign the page to any of the categories of a  
15 particular tier." ('459 Patent 6:12-16.) "After the creator decides to  
16 which categories to assign the page, the creator may mark or tag the  
17 page as belonging in or within the assigned categories by associating,  
18 with the page, the corresponding indicium for each assigned category."  
19 (459 Patent 6:50-51.) "[T]he specification . . . consistently and  
20 exclusively" states that the categories are assigned to a network page  
21 by the creator. Hologic, Inc. v. SenoRx, Inc., 639 F.3d 1329, 1338 (Fed.  
22 Cir. 2011).

23           Therefore, the following constructions of "assigning said  
24 network page to one or more of a plurality of said list of categories"  
25 and "a set of categories and subcategories to which the network page is  
26 assigned" are adopted:

27           The creator assigns the network page to one or more  
28 categories; and, a set of categories and subcategories to which the

1 network page is assigned by the creator.

2 **C. "Categories related to public domain, fair use only, use with**  
3 **attribution, and permission of copyright owner needed"**

4 The parties dispute the meaning of the phrase "categories  
5 related to public domain, fair use only, use with attribution, and  
6 permission of copyright owner needed." Iconfind argues this phrase "need  
7 not be construed separately and should be given its plain and ordinary  
8 meaning in the context of the intrinsic record as understood by a person  
9 of skill at the time of the invention." (Iconfind Br. 26:22-24, 27:1.)  
10 Google seeks a construction which "requires that the method provide four  
11 mutually exclusive categories as the claims require." (Google Br. 22:6-  
12 12.) Iconfind responds that "'each' of the four categories need not be  
13 represented in . . . 'a category'" in claims 6 and 31. (Iconfind Resp.  
14 Br. 15:20-21.)

15 Claim 6 states the "categories based on the copyright status  
16 of material on a page comprise categories related to public domain, fair  
17 use only, use with attribution, and permission of copyright owner  
18 needed." ('459 Patent 12:54-56.) Claim 31 states "the copyright status  
19 comprises categories related to public domain, fair use only, use with  
20 attribution, and permission of copyright owner needed." ('459 Patent  
21 14:40-42.) "In the patent claim context the term compris[e] is well  
22 understood to mean 'including but not limited to.'" Cias, Inc. v.  
23 Alliance Gaming Corp., 504 F.3d 1356, 1360 (Fed. Cir. 2007) (citation  
24 omitted). Therefore, a person of ordinary skill in the art would  
25 understand that the category based on copyright status in claims 6 and  
26 31 includes "categories related to public domain, fair use only, use  
27 with attribution, and permission of copyright owner needed."

28 The specification provides the following definitions of these

1 categories:

2 Public Domain is material that is in the public  
3 domain and can be used freely without any  
4 restrictions. Fair Use Only is material meant to be  
5 used in accordance with accepted fair use  
6 guidelines. Use with Attribution is material that  
7 can be used as long as its use is accompanied by an  
8 attribution to the author or copyright owner.  
9 Permission of Copyright Owner Needed is material  
10 that cannot be used unless the copyright owner is  
11 first contacted for permission which may or may not  
12 be granted and may include fees and additional  
13 terms.

14 ('459 Patent 5:49-58.)

15 In light of the specification and the claims, a person of  
16 ordinary skill in the art reading the '459 Patent would understand that  
17 claims 6 and 31 require categories that relate to the definitions  
18 provided in the '459 Patent for Public Domain, Fair Use Only, Use with  
19 Attribution, and Permission of Copyright Owner Needed. Therefore, the  
20 following construction of "categories related to public domain, fair use  
21 only, use with attribution, and permission of copyright owner needed" is  
22 adopted:

23 The category based on copyright status includes categories  
24 related to the following: in the public domain and can be used freely  
25 without any restrictions; meant to be used in accordance with accepted  
26 fair use guidelines; can be used as long as its use is accompanied by an  
27 attribution to the author or copyright owner; or, cannot be used unless  
28 the copyright owner is first contacted for permission which may or may  
not be granted and may include fees and additional terms.

**D. Agreed Upon Constructions**

The parties have submitted agreed upon constructions for the  
following terms which are also adopted:

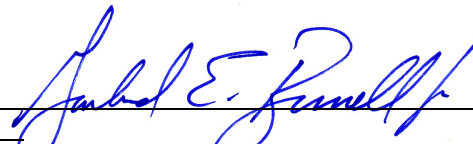


Term	Construction
category for transacting business	A category for network pages that have as a purpose transacting business
category for providing information	A category for network pages that have as a purpose the provision of information, for example, network pages that contain articles, journals, or publications
categorization label	Label indicating a category or categories to which a page is assigned
categorization code	System of characters or symbols that represent categories

The parties shall file a further joint status report within thirty (30) days of the date this order is filed addressing the following:

- a) The filing of dispositive motions, and the timing of those motions;
- b) Anticipated post-claim construction discovery; and,
- c) Any other pretrial matters.

Dated: November 1, 2012

  
 \_\_\_\_\_  
 GARLAND E. BURRELL, JR.  
 Senior United States District  
 Judge