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

ICONFIND, INC., Plaintiff, v. GOOGLE INC., Defendant.	Case No. 2:11-cv-00319-GEB-JFM **PLAINTIFF ICONFIND, INC.'S *MARKMAN* BRIEF**

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Pursuant to the Court's Order on October 7, 2011 (Dkt. No. 72), Plaintiff IconFind, Inc. ("IconFind") hereby provides its Opening *Markman* Brief.

I. INTRODUCTION

Plaintiff IconFind, Inc. ("IconFind") has charged Defendant Google Inc. ("Google") with infringement of independent claims 1, 30, and 31 and dependent claims 6, 9, 16, 17, 19, 20, 21, 22, 27, 28 and 29, of U.S. Patent No. 7,181,459 ("the '459 Patent") (Exhibit A).

The first step in resolving the issue of infringement is to determine the meaning of the disputed terms. On March 28, 2012, the parties exchanged their respective identifications of claim terms that may require construction.

The parties also agreed to the meaning of four claim terms, all of which were construed previously in *Iconfind Inc. v. Yahoo! Inc.*, 2009 U.S. Dist. LEXIS 115923 (E.D. Cal. Dec. 14, 2009) (the "Yahoo! Litigation") ("Yahoo! *Markman* Order") (Exhibit B). The parties agree and request that this Court adopt those four constructions in total.

The parties dispute the meaning of four other claim terms. IconFind asserts for two of these four terms that no specific construction is necessary ("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 network page is assigned") and that the plain and ordinary meaning of the terms should apply. IconFind has, however, offered alternative constructions should the Court decide that construction of these terms is required.

IconFind's proposed construction for the third disputed claim term ("network

page") is the same as that adopted by the Court in the Yahoo! Litigation. Google's proposed construction differs from the Court's construction in that it adds a limitation found nowhere in the '459 Patent and its corresponding file history ("wherein an image on a page does not constitute a page"). As for the remaining disputed claim term, ("categories related to public domain, fair use only, use with attribution, and permission of copyright owner needed"), the parties dispute the meaning of this term and offer slightly different constructions.

Federal Circuit law requires that patent claims be construed based upon the plain and ordinary meaning of the claim terms themselves, consistent with the intrinsic evidence of record. IconFind has proposed constructions which abide by this legal framework. In contrast, Google has proposed constructions which are not supported by the intrinsic evidence of record, much less the plain and ordinary meaning of the claims themselves. Google's proposed claim constructions – all of which are presumably sought for the sole purpose of supporting Google's non-infringement contentions – are replete with violations of the basic canons of claim construction, and should be rejected by the Court.

II. THE '459 PATENT

The inventors of the '459 Patent, Mr. Lee H. Grant and Ms. Susan Capizzi, recognized in the late 1990s problems associated with the way digital information was organized and retrieved. Ms. Capizzi has a master's degree in Library Science and has over twenty-five years of experience as a reference librarian. Mr. Grant has been involved in the telecommunications industry since his graduation with a Bachelors of

Science degree from the University of Michigan in 1978. The team's ultimate goal was to improve the way material on the Internet was categorized in order to improve access to its contents.

The inventions claimed in the '459 Patent generally describe a method for categorizing network pages. In the context of the Internet, one problem with the organization of web pages was the lack of a standardized categorization system for the information contained on such web pages. (Exhibit A, '459 Patent, Col. 1, ll. 38-48). The inventors set out to accomplish their goal by creating a method for categorizing network pages based upon the material on the page, including whether the pages contained commercial or non-commercial information, as well as the copyright status of the material on the page. (Exhibit A, 459' Patent, Col. 3, ll. 8-21).

The '459 Patent, which issued from application No. 10/082,596 (see Exhibit C, File History for application No. 10/082,596), claims priority to a number of related patent applications:

- Provisional application No. 60/132,694, filed on May 4, 1999 ("the '694 Application");
- Non-provisional patent application No. 09/565,695, filed on May 3, 2000 ("the '695 Application");
- Provisional application No. 60/311,379, filed on Aug. 9, 2001 ("the '379 Application"); and
- Provisional application No. 60/271,041, filed on Feb. 23, 2001 ("the '041 Application").

III. THE ACCUSED GOOGLE INSTRUMENTALITIES

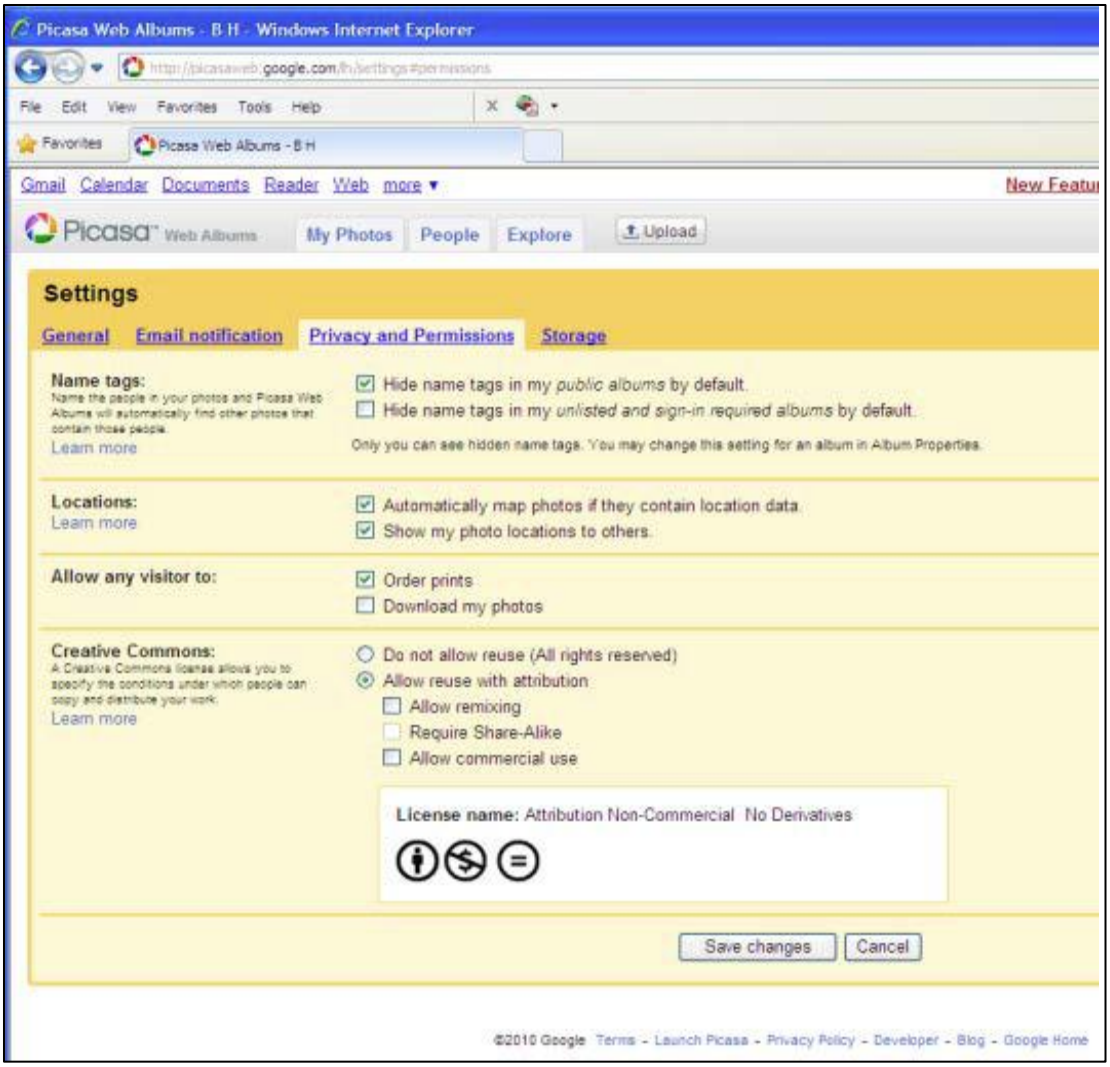
Although claims are not construed to determine whether they cover an accused

method, the Federal Circuit has emphasized that claim construction should be done with at least some knowledge of the accused method. *Mass. Inst. of Tech. v. Abacus Software*, 462 F.3d 1344, 1350-1351 (Fed. Cir. 2006); *Lava Trading, Inc. v. Sonic Trading Mgmt., LLC*, 445 F.3d 1348, 1350 (Fed. Cir. 2006). When the Court is deprived of this "vital contextual knowledge," claim construction runs the risk of taking on the attributes of an advisory opinion. *Lava Trading*, 445 F.3d at 1350. It is therefore entirely appropriate, if not necessary, for the Court to have a basic understanding of the Accused Google Instrumentalities.

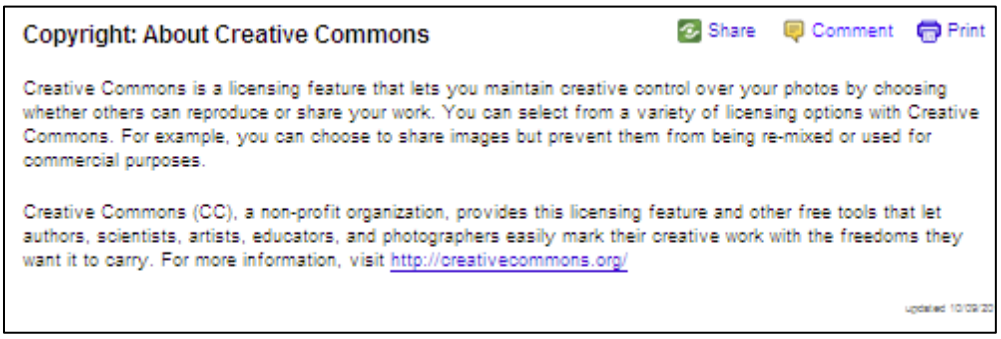
IconFind asserts that three Google instrumentalities infringe the claims of the '459 Patent: (1) Google's Picasa; (2) Google's Google Books; and (3) Google's Knol.

1. Google Picasa

Google's Picasa is an online photo management and sharing application. Picasa enables users to upload, manage and share their photographs with others online. Picasa incorporates into its website the use of the Creative Commons license. As shown below, Picasa provides a list of categories for uploaded photos including commercial and noncommercial use and a variety of copyright settings:



The creative commons license is explained in detail on the Picasa website:

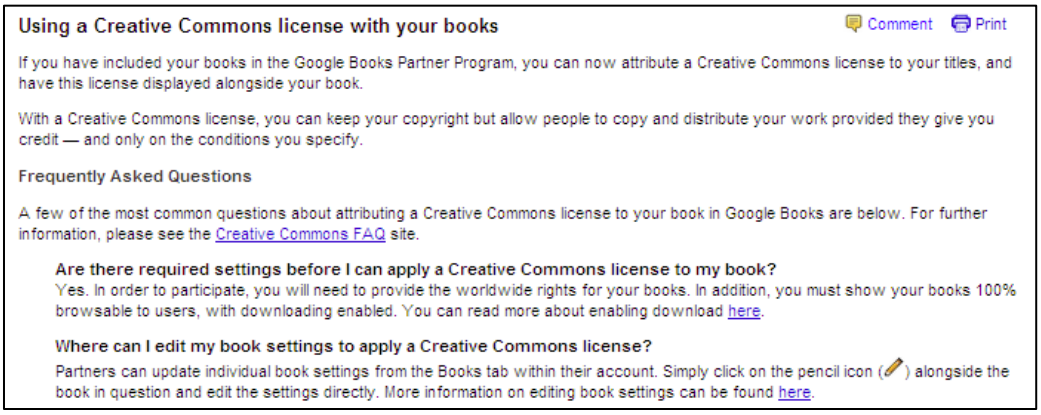


Accordingly, through Google Picasa, Google assigns to network pages one or more of the categories or subcategories based upon the user's selection. The resulting

web page that is created by Google contains a corresponding categorization label which represents the one or more of the categories to which the page has been assigned.

2. Google Books

Google's Google Books is an online resource that allows users to search for, browse and buy or borrow books. Google Books also enables publishers and authors to promote and market their books. Google Books incorporates into its website the use of Creative Commons licenses. As shown below, through Google Books, Google provides a list of categories for uploaded books including commercial and noncommercial use and a variety of copyright settings:



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Partners can update individual book settings from the Books tab within their account. Simply click on the pencil icon ( ) alongside the book in question and edit the settings directly. More information on editing book settings can be found here.

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Types of Creative Commons licenses

Here is a summary of all of the available types of licenses, along with links to the Creative Commons site for further details on each type:

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   Allows distribution of your book with attribution but prohibits commercial use or derivative works. Terms available here.
2. Creative Commons (Attribution-Noncommercial)
   Allows distribution of your book and derivative works provided there is attribution in each case, but prohibits commercial use. Terms available here.
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http://books.google.com/support/partner/bin/answer.py?answer=156266

IF003147

IF003412

Accordingly, Google assigns to network pages one or more of the categories or subcategories based upon the user's selection. The resulting web page that is created contains a corresponding categorization label which represents the one or more of the categories to which the page has been assigned:

3. Knol

Google's Knol is an online knowledge resource that allows users to share and add content collaboratively. Knol enables users to upload, manage and share their "knols" with others online. Knol incorporates into its website the use of Creative Commons licenses. As shown below, Knol provides a list of categories for uploaded "knols" including commercial and noncommercial use and a variety of copyright settings:

Licenses in Knol

Contents

- Setting the license
- Default license
- Searching for knols by license.

Setting the license

We are encouraging authors to use a popular "some rights reserved" license for their content. Click on the **Settings** link and go to the **General** panel. You can specify the license for each knol you write.

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Learn more

Select the license for sharing and adapting this knol:

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  Details
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Searching for knols by license.

You can search for knols by license, using the Search Toolkit.

Comments

Write New Comment ▼

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IF006622

Accordingly, Google assigns to network pages one or more of the categories or subcategories based upon the user's selection. The resulting web page that is created by

Google contains a corresponding categorization label which represents the one or more of the categories to which the page has been assigned:

IV. APPLICABLE LEGAL STANDARDS

Claims are to be interpreted in view of the intrinsic evidence – namely the claims themselves, the specification and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*). The analytical focus of claim construction must begin with and remain centered on the language of the claims themselves. *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001). There is a heavy presumption that a claim term carries its ordinary and

customary meaning to persons of skill in the art at the time of the invention. *3M Innovative Prop. Co. v. Avery Dennison Corp.*, 350 F.3d 1365, 1370 (Fed. Cir. 2003). Sometimes the ordinary meaning of a claim term is readily apparent, in which case claim construction involves "little more than the application of the widely accepted meaning of commonly understood words." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*). Indeed, some claim terms are so basic that no further construction is required at all. *W.E. Hall Co., Inc. v. Atlanta Corrugating, LLC*, 370 F.3d 1343, 1350 (Fed. Cir. 2004). The context of surrounding words in the claim should also be considered in determining the ordinary and customary meaning of a disputed claim term. *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*, 345 F.3d 1318, 1325 (Fed. Cir. 2003).

The claims themselves do not stand alone, but rather are part of a "fully integrated written instrument." *Phillips*, 415 F.3d at 1315 (quoting *Markman*, 52 F.3d at 978). Thus, the claims "must be read in view of the specification, of which they are a part." *Id.* The specification is thus "the primary basis for construing the claims" and has been described as "the single best guide to the meaning of a disputed term." *Id.* The Court should never lose sight that while claims must be construed in light of the specification, limitations from the preferred embodiments or specific examples in the specification cannot be read into the claims. *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1370 (Fed. Cir. 2008) ("[T]his court will not at any time import limitations from the specification into the claims."); *Laryngeal Mask Co. Ltd. v. Ambu A/S*, 618 F.3d 1367 (Fed. Cir. 2010). The Federal Circuit has explained the reasoning behind this:

If everything in the specification were required to be read into the claims,

> or if structural claims were to be limited to devices operated precisely as a specification-described embodiment is operated, there would be no need for claims. Nor could an applicant, regardless of the prior art, claim more broadly than that embodiment … It is the claims that measure the invention.

SRI Int'l v. Matsushita Elec. Corp., 775 F.2d 1107, 1121 (Fed. Cir. 1985). Thus, while the specification may be used to aid in the interpretation of the claims, it may not be used as a source for adding extraneous limitations, even when a patent discloses only a single embodiment in the specification. *Laryngeal Mask Co. Ltd.*, 618 F.3d 1367; *Gemstar-TV Guide Int'l, Inc. v. ITC*, 383 F.3d 1352, 1366 (Fed. Cir. 2004). The examples described and illustrated in the specification are intended to be just that – examples, not claim limitations. *Intervet Inc. v. Merial Ltd.*, 617 F.3d 1282, 1287 (Fed. Cir. 2010). As the Federal Circuit has long held: "Specifications teach. Claims claim." *Rexnord Corp. v. Laitram*, 274 F.3d 1336, 1344 (Fed. Cir. 2001).

In addition to consulting the specification, the Court should also consider the patent's prosecution history. *Phillips*, 415 F.3d at 1317 ("[T]he prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention."). While the prosecution history may alter the plain meaning of claim language through the doctrine of prosecution history disclaimer, for such disclaimer to attach, the Court must find "disavowing actions or statements made during prosecution [which are] both clear and unmistakable." *Omega Eng'g, Inc. v. Raytek, Corp.*, 334 F.3d 1314, 1326 (Fed. Cir. 2003). Thus, disclaimer must be express, and not one that arises through mere inference. *SunRace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1306 (Fed. Cir. 2003).

The intrinsic record, comprising the claims, the specification, and the prosecution history, should be examined in every case to determine whether the presumption of ordinary and customary meaning of a disputed claim term is rebutted. *Arlington*, 345 F.3d at 1325-26. The Court may also rely upon extrinsic evidence, which consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises. *Phillips*, 415 F.3d at 1317. The Court is not prohibited from examining extrinsic evidence, even when the patent document itself is clear. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1308 (Fed. Cir. 1999). However, extrinsic evidence, including expert testimony, may not be used to vary or contradict the otherwise unambiguous meaning of a claim term, *Desper Prods., Inc. v. QSound Labs*, 157 F.3d 1325, 1333 (Fed. Cir. 1998), and is less significant than intrinsic evidence in determining the proper claim construction. *Phillips*, 415 F.3d at 1317.

V. AGREED CONSTRUCTIONS

The parties have agreed to the constructions of the following terms, which adopt constructions set forth by the court in the Yahoo! Litigation.

Term	Construction	Yahoo! *Markman* Order"
category for transacting business	A category for network pages that have as a purpose transacting business	Yahoo! *Markman* Order, p. 8-13.
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	Yahoo! *Markman* Order, p. 13-15.
categorization label	Label indicating a category or categories to which a page is assigned	Yahoo! *Markman* Order, p. 15-19.
categorization	System of characters or symbols	Yahoo! *Markman* Order, p.

code	that represent categories	19-23.

(Exhibit B, Yahoo! *Markman* Order, pp. 8-23).

The parties respectfully and jointly request that this Court adopt these four constructions in total.

VI. ICONFIND'S PROPOSED CLAIM CONSTRUCTIONS

A. Network Page

Terms	IconFind's Proposed Construction	Google's Proposed Construction
network page	Page on the Internet, private corporate network, intranet, local area network or other network	Page on the Internet, private corporate network, intranet, local area network or other network wherein an image on a page does not constitute a page

IconFind's proposed construction of the term "network page" is the same advocated by IconFind in the Yahoo! Litigation and the construction the Court adopted in the Yahoo! Litigation. Google's proposed construction differs from IconFind's in one important respect: Google's construction improperly includes a limitation "wherein an image on a page does not constitute a network page." Google has included this limitation, of which there is no support for in the '459 Patent, presumably because it will allegedly support its claim of non-infringement for one of the Accused Instrumentalities, Google Picasa.

1. IconFind's Proposed Construction is Aligned with the '459 Patent and Its Specification

The term "network page" is found in each of independent Claims 1, 30 and 31. "Network page" appears five times in each independent claim (1, 30 and 31). The claims

consistently refer to "network page" to generally describe a page which contains information or material to be categorized and the term it is used consistently in each:

> 1. A computer implemented method of categorizing a **network page**, comprising: providing a list of categories, wherein said list of categories include a category for transacting 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; assigning said **network page** to one or more of said list of categories; providing a categorization label for the **network page** using 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.
>
> 30. A computer implemented method for categorizing a **network page**, comprising: providing a list of categories, wherein said list of categories include a category for transacting business and a category for providing information, and wherein said list of categories include a plurality of categories based on the copyright status of material on a page; providing a categorization code for labeling the **network page** with a categorization label, wherein said categorization label indicates a set of categories and subcategories to which the **network page** is assigned, and wherein said categorization 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**.
>
> 31. A computer implemented method for categorizing a **network page**, comprising: providing a list of categories, wherein said list of 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 attribution, and permission of copyright owner needed; assigning said **network page** to one or more of a plurality of said list of categories; providing a categorization label for the **network page** using the copyright status of the material on the **network page**; and controlling usage of the network page using the categorization label and the copyright status of the **network page**.

(Exhibit A, '459 Patent, Col. 12, ll. 24-38; Col. 14, ll. 17-33; Col. 14, ll. 34-51) (emphasis added). "Quite apart from the written description and the prosecution history, the claims themselves provide substantial guidance as to the meaning of particular claim

terms." Phillips, 415 F.3d at 1314. "[T]he context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning of those terms." Id.

IconFind's interpretation again comes directly from the specification. The 459' Patent specification states:

> The invention includes methods for categorizing a page as it is being created or as it exists on a network, and for searching a network. **Networks include the Internet and private corporate networks, such as intranets and local area networks**.

(Exhibit A, '459 Patent, col. 4, ll. 46-49) (emphasis added). The specification at col. 5, ll. 62 – 64, likewise states that the "first embodiment of the invention is a method for categorizing a page on a network, as the page is being created or during editing at a later time." It is clear that the term "network page" was used in order to include not just pages on the Internet, but also pages on different types of networks, such as private or corporate networks, intranets, and local area networks. It is also evident from the Field of the Invention section that the inventors sought to categorize pages on all types of networks, including specifically those pages on the Internet:

> 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.

(Exhibit A, '459 Patent, Col. 1, ll. 20-24). The specification is "the single best guide to the meaning of a disputed term." See *Phillips*, 415 F.3d at 1315. Accordingly, the specification, which the patent claims **must** be read in light of, clearly supports IconFind's definition of "network page." See *Id.* at 1315.

2. Google's Attempt to Utilize IconFind's Counsel's Statements During the Yahoo! Markman Hearing To Add In a Negative Limitation is Improper

Google's proposed interpretation, on the other hand, inappropriately limits the scope of the claim term "network page" by importing a negative limitation into the claims that there is simply no support for anywhere in the '459 Patent. Google argues that the definition of the term "network page" should also include limiting language of what Google asserts a network page **is not**: an image on a page. Google asserts this argument because it will allegedly support its non-infringement position for one of the Accused Instrumentalities, Google Picasa. Google can point to nothing in the intrinsic record to supports its position, and this shortcoming is fatal to its position. The Manual of Patent Examining Procedure clearly instructs patent examiners that "Any negative limitation or exclusionary proviso must have basis in the original disclosure." MPEP § 2173.05(i). There simply is no basis in the original disclosure of the '459 Patent for Google's negative limitation. Google instead seizes on a comment made by counsel during the claim construction hearing and discussed in dicta in the Yahoo! Markman Order. Google attempts to twist counsel's statement into some sort of stipulation that carries into this case. As explained in detail below, Google is wrong. Considered in context, it is clear that counsel's statement is completely consistent with IconFind's and the Yahoo! Court's interpretation.

At the December 7, 2009 claim construction hearing, the parties discussed, among other things, the construction of the term "network page" as it appears in the '459 patent. Nevertheless, at least in the abstract, the Court and the parties discussed whether the plain

and ordinary meaning of a "page" on a network can mean an image "on" a page. During this discussion, the Court questioned each party about its position, including the following discourse with IconFind's counsel:

> **THE COURT:** All right. Well, if you want to just -- we can put it on the record. You do not claim that an image which is on a page is a, quote, page, unquote, itself.
>
> **MR. HAAN:** An image itself, i**n and of itself** the image file is not a page.
>
> **THE COURT:** All right.

(Exhibit D, Transcript of Proceedings at p. 75) (emphasis added). Google twists this language to argue that an image "on" a page is not a "network page." This is simply not the case. While an image file in and of itself is not a page, an image file accessible over a network can be a page. Accordingly, Google's unsupported negative limitation should not be adopted.

By way of example, an image file called "football.jpg" is not a page in and of itself. This file can be placed on a memory storage device, such as a CD-ROM and it still is not a page. It exists only as a file called "football.jpg." However, when this same image file is placed on a memory storage device such as a server which is accessible over a network, then the image file is a page on a network. Specifically, when "football.jpg" is accessible over the Internet (the Internet is one example of a network) using the address http://www.statefansnation.com/wp-content/uploads/2009/06/football.jpg, then the image file constitutes a page on a network. As that address clearly indicates, that particular page is made up solely of an image file – "football.jpg". Attached as Exhibit E is the page displayed when the above-listed address is accessed, which visually confirms

that a page on a network can be made up solely of an image file. Of course, a page can be made up of many files, text and other information as well.

Accordingly, while an image file in and of itself is not a page, an image file accessible over a network can be a page. As such, Google's negative limitation should not be included and this Court should adopt IconFind's proposed construction.

B. Assigning said network page to one or more of [a plurality of said list of categories]

Terms	IconFind's Proposed Construction	Google's Proposed Construction
assigning said network page to one or more of [a plurality of] said list of categories	This element need not be construed separately and should be given its plain and ordinary meaning in the context of the intrinsic record as understood by a person of skill at the time of the invention. If the Court deems a construction is necessary, IconFind proposes: Assigning the network page to at least one of the categories	The creator of the web page choosing which one or more of [a plurality of] said list of categories characterize said network page

The term "assigning said network page" is found only in independent Claim 1. Claim 1 uses the term "assigning" in the plain and ordinary sense: to generally describe the verb of "assigning" a network page to at least one category:

> 1. A computer implemented method of categorizing a network page, comprising: providing a list of categories, wherein said list of categories include a category for transacting 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; **assigning said network page** to one or more of said list of categories; providing a categorization label for the network page using 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.

(Exhibit A, '459 Patent, Col.12, ll. 24-38) (emphasis added).

"Quite apart from the written description and the prosecution history, the claims themselves provide substantial guidance as to the meaning of particular claim terms." *Phillips*, 415 F.3d at 1314. "[T]he context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning of those terms." *Id*. IconFind's assertion that the plain and ordinary meaning of the word "assigning" should apply comes directly from the claim, its surrounding words, as shown above, and the specification. The specification explains the "assigning" element as follows:

> The first embodiment of the invention is a method for categorizing a network page. The method comprises the steps of providing a list of categories and providing the opportunity **to assign a page to one or more of a plurality of the categories**.

(Exhibit A, '459 Patent, Col.3, ll. 11-15) (emphasis added).

> The method includes the steps of providing the creator with a list of categories and providing the creator an opportunity **to assign the page to one or more of the categories**.

(Exhibit A, '459 Patent, Col.5, ll. 64-67) (emphasis added).

The specification likewise explains how the "assigning" takes place:

> The creator of a Web page may assign the Web page to any number or combination of the categories of three tiers 12, 14, and 16, and one of the copyright-status categories 17, 15 depending on which categories best characterize the Web page. The steps of assigning a page to categories may be performed in several different ways known to those skilled in the art.

(Exhibit A, '459 Patent, Col.6, ll. 12-18).

> After the creator decides to which categories to assign the page, **the creator may mark or tag the page as belonging in or within the assigned categories by**

associating, with the page, the corresponding indicium for each assigned category.

(Exhibit A, '459 Patent, Col.6, ll. 12-18) (emphasis added).

Using the categorization code, the creator can assign a categorization label to each page.

(Exhibit A,'459 Patent, Col.7, ll. 1-3) (emphasis added).

The specification is "the single best guide to the meaning of a disputed term." See Phillips, 415 F.3d at 1315. The specification supports IconFind's assertion that no special definition is necessary here. Assigning means just what the word indicates: assigning or associating the page with one or more categories using a categorization label or indicium.

Moreover, the plain and ordinary meaning of the phrase "assigning" is supported by the dictionary definition from around the time the '459 Patent was filed. The American Heritage Dictionary, copyrighted in the year 2000, defines in relevant part the word "assign" as: "[t]o ascribe; attribute." (Exhibit F, p. 108). These different words mean the same thing: assigning, designating or attributing. Accordingly, the plain and ordinary understanding of the word "assigning" is all that is necessary here. Assigning means just that: assigning.

Should the Court decide that it is necessary to construe this claim term, IconFind states that the following is the proper construction "assigning the network page to at least one of the categories." This construction simply clarifies that "one or more" means "at least one."

Google's proposed interpretation, on the other hand, is flawed in two respects: (1) first, it inappropriately limits the scope of the claim term "assigning said network page" by importing limitations into the claims that there is simply no support for anywhere in the patent; and (2) it robs the verb "assigning" as found in Claim 1 of its true meaning by replacing it with "choosing."

Google's construction is improper for this reason and for this reason alone: Google through its construction attempts to add into the claims the actor that performs the steps of the claimed methods ("creator of the web page choosing"). The inventors chose not to expressly identify an actor performing the steps of the claimed method, and none should be imported during claim construction. The word "creator," while appearing in the specification 22 times, does not appear once in the claims. This was intentional. The inventors never intended for this limitation to be included in the language of the claims. The inclusion of this limitation defies a basic cannon of claim construction: importing a limitation from the specification into the claims. See *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1370 (Fed. Cir. 2008) ("[T]his court will not at any time import limitations from the specification into the claims."); *Laryngeal Mask Co. Ltd. v. Ambu A/S*, 618 F.3d 1367 (Fed. Cir. 2010); *Gemstar-TV Guide Int'l, Inc. v. ITC*, 383 F.3d 1352, 1366 (Fed. Cir. 2004). For this reason, Google's construction must be discarded.

In sum, should the Court find that a construction is necessary, IconFind requests that its proposed construction be adopted.

C. A set of categories and subcategories to which the network page is assigned

Terms	IconFind's Proposed Construction	Google's Proposed Construction
a set of categories and subcategories to which the network page is assigned	This element need not be construed separately and should be given its plain and ordinary meaning in the context of the intrinsic record as understood by a person of skill at the time of the invention. If the Court deems a construction is necessary, IconFind proposes: a set of categories and subcategories to which the network page is assigned where subcategories are combinations of categories	A set of categories and subcategories that were chosen by the creator of the web page as characterizing the network page

This element need not be construed separately and should be given its plain and ordinary meaning. The real term at issue here is "subcategories." There is no need to define this term. The term "subcategory" simply means a category made up of two or more categories, or, a combination of categories. It is found once in independent Claim 31:

> 30. A computer implemented method for categorizing a network page, comprising: providing a list of categories, wherein said list of categories include a category for transacting business and a category for providing information, and wherein said list of categories include a plurality of categories based on the copyright status of material on a page; providing a categorization code for labeling the network page with a categorization label, wherein said categorization label indicates **a set of categories and subcategories to which the network page is assigned**, and wherein said categorization 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.

(Exhibit A, '459 Patent, Col. 14, ll. 17-33) (emphasis added).

IconFind's assertion that the plain and ordinary meaning of the phrase "a set of categories and subcategories to which the network page is assigned" should apply comes directly from the specification. The specification explains that a network page can be assigned to multiple categories, thereby creating subcategories. Figures 4 and 9 (and their corresponding descriptions) explain this concept clearly and succinctly:

FIG. 4 is a Venn diagram showing the intersection of the domains corresponding to the categories of Commerce and Information.

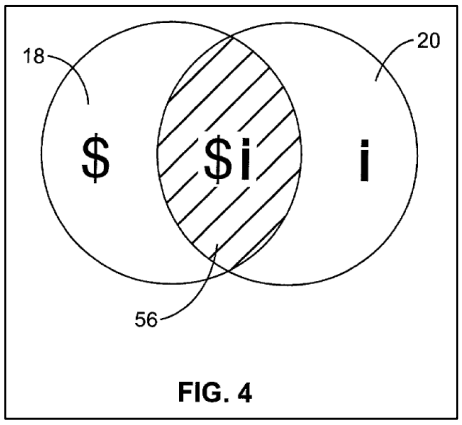
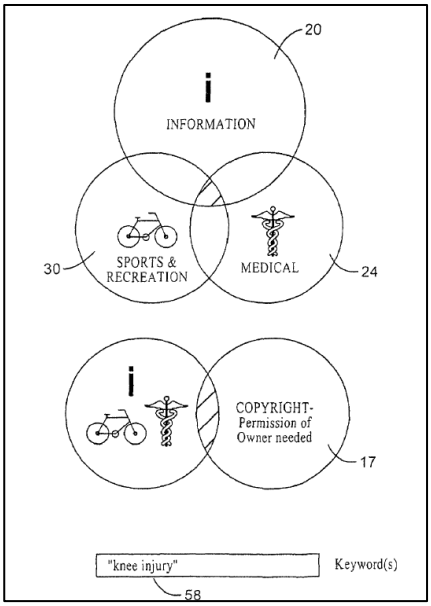


FIG. 4

(Exhibit A, Figure 4 and Col. 4, ll. 22-24). FIG. 9 is a Venn diagram showing an example of the relationship between the subcategory created by selecting a combination of the categories and the keyword search.



(Exhibit A, Figure 9 and Col. 4, ll. 37-39).

As shown above in the above Venn diagrams, the "subcategory," the shaded portion in the graphics, is simply the combination of the larger circles representing categories. The plain and ordinary meaning of this phrase is evident here. No construction is necessary. Other portions of the specification also confirm that this is simply a combination of categories. See Col. 4, ll. 49-48, Col. 5, ll. 4-9, Col. 6, ll. 28-33, Col. 10, ll. 2-3, Col. 10, ll. 23-28, Col. 11, ll. 3-10, Col. 11, ll. 15-26 and Col. 11, ll. 34-37.

Moreover, the plain and ordinary meaning of the phrase "subcategory" is supported by the dictionary definition from around the time the '459 Patent was filed. The American Heritage Dictionary, copyrighted in the year 2000, defines in relevant part the word "subcategory" as: "A subdivision that has common differentiating characteristics within a larger category." (Exhibit F, p. 1722). Accordingly, the plain

and ordinary understanding of the word "subcategory" is applicable here. Nothing more is required.

However, should the Court find that additional elaboration is necessary, IconFind asserts that, as shown in the chart above, the correct construction is one that clarifies that a subcategory is a combination of two or more categories ("a set of categories and subcategories to which the network page is assigned where subcategories are combinations of categories").

One must question Google's motivation in electing for this claim term to be construed where it is quite evidence that it need not. IconFind asserts that Google's motivation is simple: it is an attempt to improperly limit the scope of this claim by adding in a limitation that is found nowhere in the specification to avoid infringement. Google, again, attempts to improperly inject into the claim an actor that performs the step of the claimed method: "the creator of the web page." For the same reasons as stated above, there is no support for the addition of this limiting language, and for this reason alone, Google's construction is improper.

Should the Court find that a construction is necessary, IconFind requests that IconFind's proposed construction be adopted.

D. Categories related to public domain, fair use only, use with attribution, and permission of copyright owner needed

Terms	IconFind's Proposed Construction	Google's Proposed Construction
categories related to public domain, fair use only,	This element need not be construed separately and should be given its plain and ordinary meaning in the context of the intrinsic record as understood by a person	Categories that indicate that the network page may be subject to each of the following licensing

use with attribution, and permission of copyright owner needed	of skill at the time of the invention. If the Court deems a construction is necessary, IconFind proposes: Categories related to material that can be used freely without any restrictions, material meant to be used in accordance with accepted fair use guidelines, material accompanied by an attribution to the author or copyright owner, and material that cannot be used unless the copyright owner is first contacted for permission	restrictions: (1) the network page may be used by others without any restrictions; (2) the network page may only be used for fair uses; (3) the network page may be used if attribution to the copyright owner is given; and (4) the network page may be used only when permission is granted by the copyright owner

IconFind's proposed construction of this phrase is straight from the specification of the '459 Patent. Google's construction, on the other hand, is not. The phrase "categories related to public domain, fair use only, use with attribution, and permission of copyright owner needed", is found in each independent Claim 31 and dependent Claim 6, which depends from independent Claim 1:

> 6. The method of claim 1, wherein said plurality of categories based on the copyright status of material on a page comprise **categories related to public domain, fair use only, use with attribution, and permission of copyright owner needed**.
>
> 31. A computer implemented method for categorizing a network page, comprising: providing a list of categories, wherein said list of 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 attribution, and permission of copyright owner needed**; assigning said network page to one or more of a plurality of said list of categories; providing a categorization label for the network page using the copyright status of the material on the network page; and controlling usage of the network page using the categorization label and the copyright status of the network page.

(Exhibit A, '459 Patent, Col.12, ll. 52-57 and Col. 14, ll. 34-51) (emphasis added).

IconFind's interpretation again comes directly from the specification, wherein the inventors explicitly defined these four terms:

> The set of copyright-status categories 17 includes the following four categories. Public Domain is material that is in the public domain and **can be used freely without any 50 restrictions.** Fair Use Only is **material meant to be used in accordance with accepted fair use guidelines**. Use with Attribution is **material that can be used as long as its use is accompanied by an attribution to the author or copyright owner**. Permission of Copyright Owner Needed is **material that cannot be used unless the copyright owner is first contacted for permission**, which may or may not be granted and may include fees and additional terms.

(Exhibit A, '459 Patent, col. 5, ll. 48-58) (emphasis added). IconFind's interpretation is exactly that which the inventors provided for in the specification:

> "Categories related to material that **can be used freely without any restrictions**, **material meant to be used in accordance with accepted fair use guidelines**, **material accompanied by an attribution to the author or copyright owner, and material that cannot be used unless the copyright owner is first contacted for permissio**n"

The specification is "the single best guide to the meaning of a disputed term." See *Phillips*, 415 F.3d at 1315. IconFind's interpretation remains true to the specification and the heart of the inventions described therein. It is the correct interpretation and should be adopted by this Court.

Instead of assisting the Court and potentially a jury, Google's proposed construction is simply confusing and is not aligned with the specification, in light of which Claims 6 and 31 must be read. It adds words where no additional words are helpful or necessary. It adds in the limitation of "licensing restrictions" which is found nowhere in the specification. Moreover, Google includes the term "network page" four times in its definition, which is unnecessary and redundant. Finally, and most

importantly, Google completely fails to define the four terms that are subject to debate here: public domain, fair use only, use with attribution, and permission of copyright owner needed.

For these reasons, Google's construction should be discarded. It is confusing and, simply put, not helpful. IconFind's construction, on the other hand, properly defines these terms, the definitions of which are taken directly from the specification of the '459 Patent. As such, IconFind's construction, which follows the intent of the inventors as set forth in the specification of the '459 Patent, is the correct one and should be adopted.

I. CONCLUSION

For all of the foregoing reasons, IconFind's proposed constructions are the correct constructions and IconFind requests that the Court adopt them in their entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 15, 2012 the foregoing:

PLAINTIFF ICONFIND INC.'S CLAIM CONSTRUCTION BRIEF

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