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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 OVERTURE SERVICES, INC.,
13 Plaintiff and Counterdefendant,
14 v.
15 GOOGLE INC.,
16 Defendant and Counterclaimant.

Case No. C 02-01991 JSW (EDL)

**GOOGLE'S RESPONSIVE CLAIM
CONSTRUCTION BRIEF
(REDACTED VERSION)**

Tutorial: March 10, 2004, 2:00 p.m.
Hearing: March 24, 2004, 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. Jeffrey S. White

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. BACKGROUND	1
A. Overview of the '361 Patent	1
B. Overview of Google AdWords Select	3
III. LEGAL STANDARD	4
A. Claim Interpretation Requires a Review of the Intrinsic Evidence	4
B. Dictionary Definitions, Although Often Useful, Are Never Alone Determinative	5
IV. ARGUMENT	6
A. "search listing" and "search result list"	6
1. A "search listing" is an entry in (or intended to be in) a search result list	7
2. Google's construction of "search result list" is consistent with the ordinary meaning of the claim terms, as used in the specification	8
a. A "search result" is something obtained in response to a search submitted by a consumer using an Internet search engine	8
b. A "list" is a series of entries, arranged one after the other	10
B. "[modifiable] bid amount"	11
1. A bid amount is the amount a successful bidder will pay	11
a. Both the ordinary meaning and the specification confirm that "bid amount" is the amount the advertiser <i>will</i> pay	11
b. The prosecution history confirms the meaning of "bid amount"	12
c. Overture has confirmed that "bid amount" refers to the actual price that will be paid	13
d. The extrinsic evidence supports Google's construction	14
2. "Modifiable" means the bid amount can be changed by the web site promoter	15
C. "a modifiable bid amount that is <i>independent of</i> other components of the search listing"	16

TABLE OF CONTENTS
(continued)

		<u>Page</u>
1		
2		
3	D. The Ordering Limitations.....	17
4	1. The dictionary definitions fail to resolve all ambiguities about the	
5	definitions of the ordering terms.....	17
6	2. Overture’s definitions would render the claims invalid as being	
7	indefinite to the extent they seek to broaden the scope of these terms	
8	beyond strict ordering	18
9	3. The specification supports Google’s constructions	19
10	E. “in response to”	22
11	F. “database”	22
12	G. “deducted from an account”	24
13	H. “account record”	24
14	I. “from a/the searcher”	25
15	V. CONCLUSION.....	25
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

FEDERAL CASES

	<u>Page(s)</u>
<i>All Dental Prodx, LLC v. Advantage Dental Products, Inc.</i> 309 F.3d 774 (Fed. Cir. 2002)	19
<i>Athletic Alternatives, Inc v. Prince Manufacturing, Inc.</i> 73 F.3d 1573 (Fed. Cir. 1998)	1
<i>Augustine Medical, Inc. v. Gaymar Industrial, Inc.</i> 181 F.3d 1291 (Fed. Cir. 1999)	3
<i>Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.,</i> 334 F.3d 1294 (Fed. Cir. 2003)	18
<i>Combined System, Inc. v. Defense Tech. Corp. of America</i> 350 F.3d 1207 (Fed. Cir. 2003)	5
<i>Deering Precision Instruments, L.L.C. v. Vector Distributing System</i> 347 F.3d 1314 (Fed. Cir. 2003)	15
<i>Elkay Manufacturing Co. v. Ebco Manufacturing Co.</i> 192 F.3d 973 (Fed. Cir. 1999)	13
<i>Ferguson Beauregard/Logic Controls v. Mega Systems, LLC</i> 350 F.3d 1327 (Fed. Cir. 2003)	20
<i>Guttman, Inc. v. Kopykake Enterprises, Inc.</i> 302 F.3d 1352 (Fed. Cir. 2002)	4
<i>Kemode Manufacturing Co. v. United States</i> 347 F.2d 315 (Ct. Cl. 1965)	19
<i>Kraft Foods, Inc. v. International Trading Co.</i> 203 F.3d 1362 (Fed. Cir. 2000)	22
<i>Kumar v. Ovonic Battery Co.</i> 351 F.3d 1364 (Fed. Cir. 2003)	2
<i>Markman v. Westview Instrs., Inc.</i> 52 F.3d 967 (Fed. Cir. 1995), aff'd, 517 U.S. 370 (1996)	4
<i>North America Vaccine, Inc. v. American Cyanamid Co.</i> 7 F.3d 1571 (Fed. Cir. 1994)	22
<i>Pitney Bowes, Inc. v. Hewlett-Packard Co.</i> 182 F.3d 1298 (Fed. Cir. 1999)	23
<i>Renishaw PLC v. Marposs SpA</i> 158 F.3d 1243 (Fed. Cir. 1998)	5, 6
<i>SciMed Life System v. Advanced Cardiovascular System, Inc.</i> 242 F.3d 1337 (Fed. Cir. 2001)	5, 20

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

<i>Seattle Box Co. v. Industrial Crating & Packing, Inc.</i> 731 F.2d 818 (Fed. Cir. 1984)	19
<i>Texas Digital Systems, Inc. v. Telegenix, Inc.</i> 308 F.3d 1193 (Fed. Cir. 2002)	4, 6, 19
<i>Vitronics Corp. v. Conceptronic, Inc.</i> 90 F.3d 1576 (Fed. Cir. 1996)	12
<i>Vivid Techs., Inc. v. American Sci. & Engineering, Inc.</i> 200 F.3d 795 (Fed. Cir. 1999)	3

FEDERAL STATUTES

35 U.S.C. § 112, ¶ 2	19
37 C.F.R. § 1.104(e)	12

I. INTRODUCTION¹

Overture's Opening Brief demonstrates a slavish devotion to selected dictionary definitions, while ignoring that such definitions are only one part of the claim construction inquiry. Overture's failure to address the intrinsic evidence leads to two fundamental problems. *First*, Overture frequently proposes that the Court simply replace each of the disputed words with synonyms found in dictionaries. These purported definitions may be unobjectionable in the abstract, but they fail to shed any light on the crucial interpretive disputes that must be resolved in order for the court (or a jury) to address the ultimate issues of invalidity and non-infringement. *Second*, by ignoring its own description of the purported invention, Overture seeks to enlarge the scope of some of the patent's claim terms in ways that are fundamentally inconsistent with the stated purpose of the invention. But for *other* claim terms, Overture proposes narrow definitions that are informed by the patent specification. Overture thus fails to follow the "predictable claim construction analysis [that] is essential to the patent system." *Athletic Alternatives, Inc v. Prince Mfg., Inc.*, 73 F.3d 1573, 1581 (Fed. Cir. 1998).

II. BACKGROUND

A. Overview of the '361 Patent

The '361 patent claims a purportedly novel method of doing what search engines are supposed to do – "prioritize results in accordance with consumers' preferences." 2:66-67. According to the '361 inventors, pre-existing search engines that relied on relevance algorithms were ill-equipped to achieve their goals and often provided random or irrelevant search results. *See* 2:48-67. At the same time, the '361 patent specification posits that traditional Internet advertisement methods were ineffective. *See* 3:16-41 (criticizing prior art "banner" advertisements, including keyword-targeted advertisements). The '361 inventors propose a single solution to both these problems: "[W]eb site promoters should be able to control their placement in search result listings so that their listings are prominent in searches that are relevant

¹ Unless otherwise indicated, all citations herein are to the '361 patent, a copy of which appears as Overture *Markman* Exh. 1. Citations in the form ____:____ are to the column and line numbers indicated, respectively. Unless otherwise indicated, citations to *numbered* exhibits refer to Exhibits to the concurrently filed Declaration of Ravind S. Grewal, while citations to *lettered* exhibits refer to Exhibits to the Declaration of Christine P. Sun, filed under seal concurrently

1 to the content of their web site.” 3:51-54.

2 In doing so, the ’361 patent describes a shift in the paradigm of searching for information
 3 on the Internet from one that is information-based to one that is commerce-based. Indeed, the
 4 ’361 patent states that the “search engine functionality of the Internet needs to be focused in a
 5 new direction to facilitate an on-line marketplace.” 3:54-56. Consistent with this commercial
 6 marketplace approach, the ’361 patent describes the people conducting the searches as
 7 “consumers” rather than as “users.” *See, e.g.*, 2:33; 2:40; 2:63; 2:66; 3:8; 3:11; 3:28; 3:49; 3:56;
 8 3:59. And it describes the authors of the web sites listed in the search results as “web site
 9 promoters” and “advertisers” rather than information providers. *See, e.g.*, 2:38-39; 2:59-60;
 10 3:20-22; 3:33-34; 3:48; 3:51; 3:57-58; 3:65. In short, the ’361 patent envisions a world where
 11 the searcher is a “consumer” looking for commercial information whose ordering is influenced
 12 by an advertiser, rather than a “user” looking for non-commercial information whose ordering is
 13 influenced by mathematical algorithms.

14 The abstract succinctly describes the claimed invention: Advertisers submit “search
 15 listings” having a description, at least one search term, and a bid amount. *See* Abstract.
 16 Advertisers bid on search terms “through a continuous online competitive bidding process.”
 17 Abstract; *see also* 5:1-5. “A higher bid . . . will result in a higher rank value and a more
 18 advantageous placement.” Abstract.

19 Despite the relative youth of both the Internet and the search engine industry, the basic
 20 concept of allowing web site promoters to control their placement did not originate with the ’361
 21 inventors. The inventors concede that others had previously used keywords to target
 22 advertisements, such as “banner” ads that appear above or alongside the search results, to search
 23 terms on search engines. 3:28-30; *see also* Fig. 7 (showing “At Hand” banner ad at top of web
 24 page). Moreover, Open Text had previously sold placement in search engine results. Exh. 1 at
 25 OVG 1371 (of record).² The pricing model chosen by the inventors – cost-per-click rather than
 26 herewith.

27 ² Articles cited during the prosecution of a patent application are intrinsic evidence. *Kumar v.*
 28 *Ovonic Battery Co.*, 351 F.3d 1364, 1368 (Fed. Cir. 2003) (citing cases). In this brief, Google
 will include “of record” parenthetical references when citing articles that were cited during
 prosecution. The first four pages of the ’361 patent list articles and patents that were cited during

per-impression pricing, *see, e.g.*, 5:22-27 – was also someone else’s idea; Proctor & Gamble had bargained for cost-per-click advertisements on Yahoo! as early as 1996. *See* Exh. 2 at OVG 1216 (of record). Finally, others had sold advertisement placements through auctions before. *See* Exh. 3 at OVG 1124 (of record) (citing articles from 1997 that described advertising auctions). The ’361 patent is thus not entitled to the broad construction that would attend a pioneer patent in the field. *See Augustine Med., Inc. v. Gaymar Indus., Inc.*, 181 F.3d 1291, 1301 (Fed. Cir. 1999) (“non-pioneers . . . must craft narrow claims to evade the strictures of a crowded art field”).

B. Overview of Google AdWords Select³

Google is one of the most popular search engines on the Internet. Hundreds of millions of users visit Google because of its uncanny ability to rank search results using a complicated and proprietary algorithm that includes Google’s “PageRank” technology.⁴ The search results produced by Google’s search engine have been lauded for their objectivity, since Google is one of the few companies that does not allow commercial considerations to affect the ranking of its search results. *See* <<http://www.rankforsales.com/google-page-rank.html>> (noting that “no one can buy a higher PageRank”).

Google also shows advertisements on the search results page in an effort to earn revenue in much the same way that the ’361 patent describes the prior art “traditional” search engines as showing advertisements on search results pages, *see* 3:28-30. These advertisements are *not* search results, just as the “banner” advertisements in prior art search engines were not search results. These banner advertisements instead appear on the same page as but to the right of search results, in small boxes that are clearly labeled ‘sponsored links’ to distinguish the advertisements from the search results themselves. *See* <<http://www.searchenginewatch.com/>

prosecution.

³ The meaning of a claim term does not depend on the method or device accused of infringement. *See Vivid Techs., Inc. v. American Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). However, because claim construction is for “resolution of disputed meanings,” *see id.* (quotation marks and citation omitted), some familiarity with AdWords Select may be useful in order to allow the Court better to understand the areas of dispute. *Id.*

⁴ *See* <<http://www.google.com/technology/index.html>> (describing PageRank).

1 searchday/article.php/2159301>.⁵

2 In February 2002, Google introduced an advertising service, AdWords Select (“AWS”),
 3 *see id.*, which Overture accuses of infringing the ’361 patent. “AdWords advertisements appear
 4 on search result pages when a query matches the keywords purchased by advertisers.” *Id.*
 5 Unlike the objective Google search results, the placement of AWS advertisements is based on a
 6 variety of factors including the advertisement’s click-through rate, the amount the advertiser is
 7 willing to pay per click, and geographic targeting. AWS also incorporates a feature called the
 8 “AdWords Discounter.” *Id.* The AdWords Discounter “monitors all bids placed for keywords,
 9 constantly on the lookout for changes. If a competitor’s bid drops on a keyword, the discounter
 10 automatically lowers your bid” *Id.*

11 III. LEGAL STANDARD

12 A. Claim Interpretation Requires a Review of the Intrinsic Evidence

13 Overture repeatedly cites *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193
 14 (Fed. Cir. 2002), in support of its assertion that claim terms ought to be construed based on their
 15 dictionary definitions. But *Texas Digital* cautions that one must also consult the intrinsic
 16 evidence:

17 By examining relevant dictionaries, encyclopedias, and treatises to ascertain possible
 18 meanings that would have been attributed to the words of the claims by those skilled
 19 in the art, *and by further utilizing the intrinsic record to select from those possible*
 20 *meanings the one or ones most consistent with the use of the words by the inventor,*
 the full breadth of the limitations intended by the inventor will be more accurately
 determined and the improper importation of unintended limitations from the written
 description into the claims will be more easily avoided.

21 308 F.3d at 1205 (emphasis added).

22 *Texas Digital’s* recitation that the specification must be construed in defining disputed
 23 claim terms is nothing new. As succinctly stated in *Markman v. Westview Instrs., Inc.*, 52 F.3d
 24 967, 979 (Fed. Cir. 1995) (en banc), *aff’d*, 517 U.S. 370 (1996), “[c]laims must be read in view
 25 of the specification, of which they are a part.” And in fact, subsequent cases make clear that the
 26 specification “is the single best guide to the meaning of a disputed term.” *Guttman, Inc. v.*
 27 *Kopykake Enters., Inc.*, 302 F.3d 1352, 1360 (Fed. Cir. 2002) (quotation marks and citation

28 ⁵ SearchEngineWatch.com is a site that is well known as a source of independent analysis in the

omitted); *SciMed Life Sys. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343 (Fed. Cir. 2001) (specification's description of the "present invention" is "strong evidence" regarding the scope of the claim). As recently as two months ago, the Federal Circuit warned district courts not to "read some isolated statements [regarding dictionaries] in certain recent opinions too rigidly and in isolation from the entire body of our claim construction jurisprudence." *Combined Sys., Inc. v. Defense Tech. Corp. of Am.*, 350 F.3d 1207, 1215 (Fed. Cir. 2003).

There are, of course, limits on how the specification may be used. The specification may be used in the claim construction process to define the words that actually appear in the claims. *See Renishaw PLC v. Marposs SpA*, 158 F.3d 1243, 1248 (Fed. Cir. 1998) ("[A] party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, at the very least, point to a term or terms in the claim with which to draw in those statements."). Thus if the specification clarifies the meaning of a claim term, courts are entitled to rely upon the context provided by the specification to define the scope of the claims. *See id.* at 1251-53 (construing "when" narrowly in light of the specification). In contrast, the specification may not be used to import limitations into the claims when the proposed limitations are divorced from the claim terms. *See id.* at 1248.

Overture itself relies on the specification to define claim terms, when that approach works in its favor. For example, Overture's construction of "bid amount" is stated in terms of a "click." Notably, this conclusion finds no support in the language of the claims, considered in isolation. Nor is it derived from dictionary definitions. Instead, the *only* way one knows that a bid amount is measured on a cost-per-click basis is the specification's repeated and consistent explanation that the invention is based on a cost-per-click pricing model. Google agrees that the Court can construe "bid amounts" to be limited to cost-per-click bids. But doing so requires Overture (and the Court) to adopt a consistent methodology in construing the other disputed terms and phrases.

B. Dictionary Definitions, Although Often Useful, Are Never Alone Determinative

The Court should reject dictionary definitions that "hav[e] no relation to the claimed Internet search industry.

invention.” *Texas Digital*, 308 F.3d at 1203. Instead, the Court should look for the definition that is “is most consistent with the use of the words by the inventor.” *Id.* Only if there are multiple definitions that are “most consistent” with the usage in the specification should the claims be construed to encompass all of those meanings. *See id.*; *see also id.* at 1205 (claim construction requires selecting from ordinary meanings “the one or ones *most* consistent with the use of the words by the inventor” (emphasis added)).

“[I]f the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction,” the inventor’s description of his invention will control. *Id.* at 1204. Even where there is no expression of “manifest” exclusion, if the specification “uses the words in a manner clearly inconsistent with . . . a dictionary definition,” that definition should be rejected. *Id.* Thus, “the construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Renishaw PLC*, 158 F.3d at 1250.

IV. ARGUMENT

A. “search listing” and “search result list”

Google has defined the term “search listing” as “an entry that is or is intended to be in a search result list,” and the term “search result list” as a series of such entries arranged one after the other (i.e. a “list”).⁶ Overture has recently revised its definitions of these terms, purportedly to “moot” some of Google’s objections and to “clarify” its proposals.⁷ Overture has, for example, revised “search listing” in response to Google’s argument that requiring the inclusion of “at least one search term” was neither supported by the specification nor internally consistent. Overture has also made clear that a search listing may be “paid or unpaid.” As to the other term,

⁶ The precise definitions proposed by the parties for these and other disputed claim terms are set forth in the Joint Claim Construction Statement, which was filed on June 24, 2003 and purportedly revised by Overture by letter on January 20, 2004. *See* Exh. 4.

⁷ Although Overture has had many months to contemplate Google’s objections, as set forth in Google’s responsive claim construction brief filed in August 2003, Overture only informed Google that it desired to revise its constructions 10 days ago and provided no argument in favor of its new constructions. Because Google will not have had the opportunity to address Overture’s fully briefed arguments in Google’s one claim construction brief, Google requested that Overture stipulate to Google’s filing of a sur-reply of no more than 5 pages, limited to these two search terms. *See* Request for Misc. Administrative Relief, p. 1 (concurrently filed with this brief). Overture refused to stipulate, despite its inability to explain why it would be prejudiced

Overture has apparently conceded that a “search result list” is an *ordered series* of “search listings,” rather than merely a *set*. Although Overture’s concessions have partially eliminated Google’s concerns, they have not completely resolved the disputes between the parties.

1. A “search listing” is an entry in (or intended to be in) a search result list

The parties dispute whether a search listing must be a “collection of information,” as Overture urges, or may be simply understood as an “entry” in a search result list.⁸ The Court should reject Overture’s proposed construction as inconsistent with the plain meaning of the term as well as the specification.

While it may be correct that a search listing will in practice almost always be a “collection of information,” such as the search term, web site description, URL, and bid amount, Overture’s attempt to import the requirement that a search listing *must* contain multiple bits of information should be rejected. The ’361 patent does not purport to have invented the concept of a “search listing,” only a method for ordering search listings in a search result list. *See* 2:33-35 (prior art search engines “enable consumers to search the Internet for a listing of web sites based on a specific topic, product, or service of interest”); 3:51-54 (“Ideally, web site promoters should be able to control their placement in search result listings so that their listings are prominent in searches that are relevant to the content of their web site.”). In early prior art bid-for-placement systems, a search listing may have included only the URL of the advertiser’s web site, which Overture would presumably argue is not a “collection of information.” Overture’s proposed construction of “search listing” should be rejected as artificially narrower than its ordinary meaning.

The specification also confirms that a “search listing” may be simply understood as an entry in (or intended to be in) a search result list, and places no limitation on the kinds or amount of information that must be included in a “listing”:

by a sur-reply. *See id.*

⁸ Overture’s Opening Brief emphasizes that search listings exist independent of whether they are included in a search result list. *See, e.g.,* Opening Brf. at 8:9-11. This is not disputed. Google’s definition includes entries that are “in (*or intended to be in*) a search result list” (emphasis added). Thus, a search listing can exist even before it is included in a search result – and, indeed, even if it is never included in a search result list. Overture also contends that Google asserts that a search result list *must* be displayed. Google’s definition, however, does not anywhere use the

The web site description 354 is a short textual description (preferably less than 190 characters) of the content of the advertiser's web site and *may be* displayed as part of the advertiser's *entry in a search result list*. The *search listing* 344 *may also* contain a title 360 of the web site that may be displayed as the hyperlinked heading to the advertiser's *entry* in a search result list.

12:56-62 (emphases added); *see also* 13:1-2. Thus, consistent with its ordinary meaning and Google's definition, the specification permits but does not require that a search listing be a collection of information.

2. Google's construction of "search result list" is consistent with the ordinary meaning of the claim terms, as used in the specification

a. A "search result" is something obtained in response to a search submitted by a consumer using an Internet search engine

The parties also dispute whether the search result list must be responsive to the searcher's inquiry. Google contends that the search result list must be in fulfillment of the consumer's request for information, whereas Overture's proposed construction includes no analogous limitation.⁹

Overture's *latest* definition of "search result" – "search listings . . . obtained as a consequence of the examination of data" – is unhelpful. Substituting Overture's definition of "search listing" in its definition of "search result list" yields the following definition: a "search result list" is "a series of [a collection of information that can be included in a search result list and which may be paid or unpaid] that is obtained as a consequence of the examination of data." In short, Overture's definition is circular: it has defined "search result list" in terms of search listing, and "search listing" in terms of a search result list.

Moreover, Overture's latest definition is overbroad and inconsistent with the specification. As illustrated in Figure 7 of the '361 patent, a search results page includes many things besides the search results. For example, it may contain the GoTo.com logo; the banner

word "display."

⁹ This dispute is relevant to infringement because the list generated by AWS is not in response to the search request and therefore is not a "search result list." Instead, a searcher using Google's site requests and receives a list generated by a Google "web search" server – that is, search listings from Google's neutral and unpaid database of web sites, ordered using Google's PageRank algorithm. The searcher also receives a list of advertisements displayed next to the PageRank results, which is *not* the information that the searcher has requested. In fact, those advertisements are no more "search results" than the advertisements that are distinguished from search results in the '361 patent.

1 advertisement at the top of the page; the search box; the “Find It!” button; etc. None of those can
 2 reasonably be called a “search result,” and yet each is “obtained as a consequence of the
 3 examination of data.” Since not everything on a search result page is a “search result,” any
 4 definition of “search result” must help differentiate a search result from the non-search result
 5 content that may appear on the page.

6 The term “search result” is best understood in reference to the concept of “search.” A
 7 “search” happens when a user is looking for a particular piece or type of information and a
 8 “search result” is the information provided in response to that search.¹⁰ 2:32-35 (“search
 9 services enable consumers to search the Internet for a listing of web sites based on a specific
 10 topic, product, or service of interest”). The entire ’361 patent is devoted to a methodology for
 11 conducting user-requested searches so as to increase the relevance to the searcher of the results
 12 of his or her searches. *See* 3:54-58. Consistent with that purpose, the ’361 specification
 13 repeatedly demonstrates that the term “search result” refers to the outcome (i.e., *result*) of a
 14 *search* requested by a user. *See, e.g.*, 2:42-46; 4:60-64; 9:42-45; 10:16-21; 13:13-16; Fig. 7 and
 15 accompanying description at 17:53-61. So a “search result” is the information provided in
 16 response to the searcher’s query, not other information that may also be included on the results
 17 page such as banner or tile advertisements.

18 Indeed, the specification specifically excludes banner advertisements from the scope of
 19 the term “search result.” *Compare* 3:16-17 (prior art relies on “current paradigms for generating
 20 web site traffic, such as banner advertising”) *with, e.g.*, 3:51-54 (“Ideally, web site promoters
 21 should be able to control their placement *in* search result listings”) (emphasis added).
 22 Keyword triggered banner advertisements are also excluded. *See* 3:28-30 (prior art targets
 23 banners to search terms). Because Overture’s proposed definition would encompass within the
 24 same banners that are explicitly distinguished from search results in the specification, it cannot
 25 be correct.

26 The extrinsic evidence confirms that search results consist of the information the searcher

27 ¹⁰ The title of the patent refers to a “search result list” as being generated by a “search engine.”
 28 Internet search engines represent one solution – well known at the time the application was filed
 – to allow Internet users to find information they are looking for among the “seemingly limitless

1 is seeking and exclude other information such as banner or tile advertisements that may appear
2 on the same page as search results.

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10 **b. A “list” is a series of entries, arranged one after the other**

11 By its revisions, Overture appears to have conceded that a “list” is, as Google proposes,
12 an *ordered* series of entries, and not merely a “set” of search listings. To the extent that Overture
13 does not agree that the claim language requires that the entries (i.e. the search listings) be
14 arranged in an order, the Court should reject Overture’s definition in favor of Google’s, which is
15 consistent with the ordinary meaning of the word “list.”¹²

16 Google’s definition is also consistent with the language of the claims, each of which
17 indicates that a “list” is what one gets after placing search listings *in an order*.¹³ The context
18 supplied by the patent specification also supports Google’s definition. The specification
19 consistently uses the term “search result list” to refer to an *ordered* set of search listings. *See*,
20 *e.g.*, Abstract (advertisers can “influence a position for a search listing within search result list,”

21
22 number of web pages” available on the World Wide Web. 2:26-35.

23 ¹¹ This distinction is important, because Google’s AWS takes a different approach. Instead of
24 including advertisers’ listings *in* search results, AWS places advertisements *next to* search
25 results. “The main difference between the two programs is the way in which their ads are listed
26 – Google’s are highlighted alongside the regular Google search results, and Overture’s appear
27 AS regular search results.” Exh. 5 at GOG 32243 (capitalized emphasis in the original).

28 ¹² American Heritage defines a “list” as “a series of names, words, or other items written,
printed, or imagined one after the other[.]” Exh. 6 at 1021. The New Oxford Dictionary of
English similarly defines a list as “a number of connected items or names written or printed
consecutively, typically one below the other[.]” Exh. 7 at 1076.

¹³ 23:11-12 (claim 1, “ordering the identified search listings into a search result list”); 24:1
(claim 11, same); 24:27-28 (claim 13, same); 25:33-35 (claim 14, “the search result list arranged
in an order determined using the bid amounts”); 27:2-3 (claim 30, “the search result list arranged
in an order corresponding to the bid amounts”); 28:50-51 (claim 52, same).

1 because position is determined by “rank,” which is in turn determined by the “bid amounts” of
 2 the search listings); 4:3-4 (“The higher an advertiser’s position on a search result list, the higher
 3 likelihood of a ‘referral’”); 5:11-12 (invention allows advertisers “to pinpoint the placement of
 4 their web site description within the search results”).

5 **B. “[modifiable] bid amount”**

6 **1. A bid amount is the amount a successful bidder will pay**

7 The parties dispute whether “bid amount” means the amount that an advertiser will
 8 actually pay if the user clicks on an advertisement (Google’s position) or whether it means the
 9 maximum amount the advertiser is willing to pay if a user clicks on an advertisement (Overture’s
 10 position). This is significant because AWS advertisers set a *maximum* bid, but the bid amount
 11 they actually pay depends on a variety of other factors and is therefore not independent of other
 12 components of the search listing as required by all of the claims.

13 **a. Both the ordinary meaning and the specification confirm that “bid amount”**
 14 **is the amount the advertiser will pay**

15 The dictionary definitions cited by the parties overwhelmingly favor Google. For
 16 example, Random House defines bid, in its verb form, to mean “to offer (a certain sum) as the
 17 price one will pay or charge: *They bid \$25,000 and got the contract.*” Exh. 8 at 204 (Random
 18 House’s italics).¹⁴ If a collector sends an buyer to a Sotheby’s auction with instructions to bid no
 19 more than \$10 million for a Picasso, and the buyer submits a winning bid of \$5 million, no one
 20 would argue that the collector’s “bid amount” was \$10 million rather than \$5 million.¹⁵

21 The patent specification unequivocally demonstrates that the “bid amount” is the amount
 22 an advertiser will pay. In particular, the specification defines the cost of a search listing as the
 23 bid amount multiplied by the number of click-throughs:

24 The system calculates the projections based on a cost projection algorithm . . . using
 [any of] a number of different algorithms known in the art. However, *since the cost*

25 ¹⁴ See also Exh. 9 at 136 (bid (again in the verb form) means “to offer (a certain sum) as the price
 26 or fee that one will pay or accept”); Exh. 10 at 111 (bid is “a statement of what one will give or
 take for something”); Exh. 11 at 170 (bid means “an offer of a price”).

27 ¹⁵ Overture argues that Google’s definition is contrary to the ordinary meaning of “bid,” in which
 28 only the winning bidder pays the amount bid. Opening Brf. at 14:5-11. Google, however, has
 defined “bid amount” to mean the amount the advertiser will pay *upon a triggering event*. If that
 triggering event (a click-through) occurs, the advertiser necessarily has “won,” and thus “will”
 pay the bid amount.

1 *of a search listing is calculated by multiplying the bid amount by the total number of*
 2 *clicks received by the search listing at that bid amount during a specified time*
 3 *period, every cost projection algorithm must generally determine an estimated*
 4 *number of clicks per month (or other specified time period) for a search listing.*

5 21:4-13 (emphasis added). If the bid amount were anything other than the actual cost per click
 6 (i.e., the amount the advertiser *will* pay for each click-through), the cost of a search listing would
 7 *not* be the bid amount multiplied by the number of clicks. Thus, the italicized assertion is *only*
 8 true if Google's proposed construction is correct.¹⁶ Because Overture's proposed construction
 9 for this term is at odds with the patent specification, it cannot be adopted as a matter of law.
 10 *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996) ("A patentee may not
 11 proffer an interpretation for the purposes of litigation that would alter the indisputable public
 12 records consisting of the claims, the specification and the prosecution history and treat the claims
 13 as a 'nose of wax.'") (citation and quotation marks omitted).

14 **b. The prosecution history confirms the meaning of "bid amount"**

15 Overture and its attorneys have on several occasions confirmed that "bid amount" means
 16 the amount an advertiser actually pays for a click. First, for example, in the Examiner's reasons
 17 for allowance filed at the conclusion of the prosecution of the '361 patent application, the
 18 Examiner stated that "the bid amount correspond[s] to a money amount that is deducted from an
 19 account . . . upon receipt of a retrieval request for the network location." Exh. 13 at 3. Overture
 20 did not file a response or otherwise take exception to this assertion, as it was entitled to do. *See*
 21 37 C.F.R. § 1.104(e). By failing to respond, Overture acquiesced in the Examiner's

22 ¹⁶ The '361 specification also consistently uses "bid amount" to mean the amount the advertiser
 23 actually *will* pay, rather than an amount it is *willing* to pay. *E.g.*, 5:23-26 (advertiser's bid is "a
 24 money amount the advertiser *will* pay . . . each time a searcher clicks on the advertiser's
 25 hyperlinked listing" (emphasis added)); 9:46-49 (bid amount is "a money amount that *is*
 26 deducted from the account of the advertiser for each time the advertiser's web site is accessed via
 27 a hyperlink on the search result list page" (emphasis added)).

28 Moreover, the appendix to the patent application, *see* 1:8-14, includes a file that defines
 "bids" as "the price you agree to pay per click-through for each search term." *See* Exh. 12 at 2;
see also **REDACTED**. Overture's citation to a different
 statement in the appendix is not to the contrary. *See* Overture *Markman* Exh. 9 ("the bid price is
 the amount you're willing to pay"). In Overture's original system, the amount an advertiser was
 charged per click was always the same as the amount that the advertiser told the system it would
 be "willing" to pay. However, as the rest of the evidence makes clear, although the bid amount
 in the original Overture system happened to be the same as the amount the advertiser indicated it
 was willing to pay, the thing that made that amount the "bid amount" was the fact that the

1 understanding. *See Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 979 (Fed. Cir. 1999).

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7 **REDACTED**
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15 **c. Overture has confirmed that “bid amount” refers to the actual price that will**
16 **be paid**

17 In a patent application that is “related” to the ’361 patent application, Overture was faced
18 with the need separately to describe the minimum, maximum, and actual cost per click. Exh. 14
19 ¶¶ 35-40. Overture chose to call the *actual cost per click* the “bid amount.” *Id.* ¶ 35.¹⁷

20 The related application describes an embodiment in which the minimum, maximum, and
21 actual cost per click are all distinct parameters. *Id.* ¶¶ 35-40. The advertiser chooses a “bid
22 cap,” which is “the maximum dollar amount at which a bid may be set by the system.” *Id.* ¶ 40.
23 The system then sets “[b]id amounts” that are “less than or equal to the bid cap.” *Id.* The bid,
24 however, will “never be lower than the minimum bid of \$0.05.” *Id.* In this application, Overture
25 described the advertiser’s *actual cost* as the “bid amount,” and the *cap* on the advertiser’s cost
26 the “bid cap.” In short, until it decided to sue Google, Overture understood “bid amount” to

27 advertiser *was in fact* charged that amount per click.

28 ¹⁷ Darren J. Davis, the first-named inventor on the ’361 patent, is listed as a co-inventor on this application, and it is being prosecuted by attorneys at Brinks Hofer, the same firm that prosecuted the ’361 patent application. Exh. 14 (face page).

mean the *actual* cost per click. Overture should not be allowed to switch course now to satisfy the exigencies of the current litigation.

d. The extrinsic evidence supports Google's construction

The extrinsic evidence offers still further support for Google's definition of "bid amount." When Overture introduced a Google-style bidding mechanism (in which advertisers can set a ceiling on a cost per click rather than directly setting the actual cost per click), it implicitly adopted Google's proposed definition of "bid amount" both in *naming* and *describing* that new system. The summer after Google introduced AWS, Overture added a new feature to its system, called "Auto Bidding," that borrowed heavily from the AWS bidding system. *See* Exh. 15 at GOG 32256. In AWS, the advertiser sets a maximum cost per click, and the system discounts the actual cost (i.e. the amount the advertiser will pay) as much as possible without sacrificing positional ranking. Exh. 16 at GOG 32255 (AWS includes "an automatic discounter, which lowers your bid amount every time there's a gap"); Exh. 5 at GOG 32244 (AWS "automatically keeps your bid one penny ahead of the competition, up to your stated maximum amount").

Overture's Auto Bidding feature was immediately recognized as being similar to AWS. *Id.* at GOG 32245 ("Overture has taken the hint and has implemented a similar tool, referred to as its 'Auto Bidding' tool"). One industry report described Overture's Auto Bidding system like this:

This new system is similar to the way bidding works on eBay. When you bid on eBay . . . you put in the most you're willing to pay. *The actual bid is the most necessary to be the leader in the auction.* If someone bids higher than your revealed bid, *your bid is adjusted* to maintain your winning position. Ebay will continue doing that until someone bids higher than the highest bid you've put in. (Ebay calls this proxy bidding.)¹⁸

Exh. 15 at GOG 32256 (emphases added). This explanation equates the "actual bid" with the amount one *will* pay, distinct from the "maximum bid." *See also* Exh. 18 at GOG 32231 (when

¹⁸ The eBay online auction system – which was already quite popular at the time the '361 patent application was filed – is one of the best known examples of an Internet system in which the maximum cost (i.e. the cost one is *willing* to bear) and the actual cost (i.e. the cost one *will* bear) are distinct. And, consistent with Google's proposed construction, eBay calls a buyer's maximum cost the "maximum bid," and the buyer's actual cost (assuming the buyer wins the

1 using Auto Bidding, “[t]he max bid is not always the actual bid price”).

2
3 **REDACTED**
4
5

See also

6 Exh. 18 at GOG 32231 (explanation, by a third party, that “Auto Bidding will change your bid
7 price for you automatically up to a Max Bid amount you have selected”).

8
9 **REDACTED**
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11 **2. “Modifiable” means the bid amount can be changed by the web site promoter**

12 The parties agree that “modifiable” includes the concept of “changeable.” Google
13 contends this refers to the *advertiser’s* control over its bid amount, while Overture argues that it
14 merely means that the bid amount can be changed – by anyone. The context provided by the
15 specification, however, makes clear that the claims are referring to changes *under the control of*
16 *the advertiser*.

17 That context demonstrates that the *purpose* of the claimed invention is to allow
18 advertisers precisely to control placement of their advertisements, which can be achieved only if
19 changes to bid amounts are controlled by the advertisers. As the inventors explain, “Ideally, web
20 site promoters should be able to control their placement” 3:51-52. To do this, one should
21 provide an “on-line marketplace[in which] companies selling products, services, or information
22 bid in an open auction environment for positions on a search result list” 3:62-64. In the
23 claimed invention, “The bidding process occurs when an advertiser enters a new bid
24 Preferably, the promoter’s bid is then processed in real time.” 5:62-65. The inventors’ failure to
25 describe the act of the *advertiser* entering a new bid as merely preferable – in contrast with real-
26 time processing, which is expressly identified as preferable – is illuminating. *See Deering*
27 *Precision Instruments, L.L.C. v. Vector Distrib. Sys.*, 347 F.3d 1314, 1323-24 (Fed. Cir. 2003)

28 auction) the “bid” or the “current bid.” *See* Exh. 17 at GOG 32225.

(rejecting the plaintiff's construction where two meanings were possible and the specification included no disclosure suggesting the plaintiff's construction).¹⁹

In sum, the ordinary meaning of the claim terms, supported by and consistent with the '361 specification as well as other intrinsic and extrinsic evidence, makes clear that the "bid amount" is the actual amount paid by an advertiser for a click and that "modifiable bid amount" means a bid amount that can be changed by the advertiser.

C. "a modifiable bid amount that is *independent of other components of the search listing*"

Overture's proposed construction of "independent of" is a non-definition; it provides no more clarity on this issue than does the phrase to be construed. In contrast, Google's definition clarifies that other components of the search listing have *no* effect on the bid amount.²⁰

Google's definition best captures the invention described by the inventors. According to the inventors, one problem with prior search systems was that their ranking of search listings was based on "multiple criteria such as keyword density and keyword location," which could yield "random and even irrelevant" results. 2:52-55. The specification establishes that the disclosed invention represents a clean break from the prior art, which relied on multiple criteria derived from the websites themselves, in favor of a market-based approach that looks to the amount each advertiser will pay for a click-through. As explained in the '361 abstract, "A higher bid by a network information provider *will* result in . . . more advantageous placement." Abstract (emphasis added). This point is confirmed in the summary of the invention. 5:35-37 ("The higher the bid, the more advantageous the placement"). Although the inventors often preface statements with the word "preferably," which appears in the specification no less than forty-nine times, the foregoing statement is offered without reservation.

Google's definition correctly highlights that the bid amount must be freely determinable by the advertiser – unconstrained by other factors, such as keyword density, or algorithmic

¹⁹ Overture's definitions are also internally inconsistent. According to Overture, a "bid amount" is the amount an advertiser is *willing* to pay, while "modifiable" means that the bid amount is changeable *by anyone*. That makes no sense. The amount an advertiser is *willing* to pay cannot be changed *by someone other than the advertiser*.

²⁰ See, e.g., Exh. 19 at 970 (equating "independent" with "unconstrained"); see also *id.* (independent means "not influenced or controlled by others," or "not influenced by the thought

1 determinations of the relevance of a web site to a search term. Were this not the case, the “free
 2 market” bidding system advocated by the inventors would, in fact, be saddled with the same
 3 problems for which they criticize prior art search systems.²¹ That is, if one’s bid amount is
 4 constrained or affected by the popularity of one’s search listing, that is not the “open auction” the
 5 specification speaks of. 3:63-64. If an advertiser’s ability to choose a bid amount is constrained
 6 by other aspects of its listing, it cannot “pinpoint” its placement. 5:11. If the bid amount is itself
 7 a function, even in part, of factors such as keyword density, then the inventors’ criticisms of the
 8 prior art also apply to the system itself.

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 11 **REDACTED**
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16 **D. The Ordering Limitations**

17 For each of the three ordering limitations (“in accordance with,” “determined using,” and
 18 “corresponding to”), the parties’ central dispute is the same: Does a search listing order that
 19 does not match the bid amount order fall within the scope of the claims?

20 **1. The dictionary definitions fail to resolve all ambiguities about the definitions of**
 21 **the ordering terms**

22 As is true for most of its claim construction arguments, Overture’s support for its
 23 constructions of the ordering limitations comes primarily from a rote stringing together of
 24 dictionary definitions of single words considered in isolation. The fundamental problem with a

25 or action of others.”); Exh. 20 at 686.

26 ²¹ Articles about Overture’s system, submitted during prosecution of the ’361 patent application,
 27 confirm that the “bid amount” must be free from constraint by other aspects of the search listing.
 28 See Exh. 21 at OVG 1222 (of record) (Overture’s system is different because “it ranks Web sites
 based on how much the sites are willing to pay . . . rather than based on keyword density or some
 other mathematical formula”); Exh. 22 at OVG 1226 (of record) (bid amount is determined by
 “[s]upply and demand”); Exh. 23 at OVG 1232 (of record) (Overture’s bids are based on “the
 free market”); Exh. 24 at OVG 1366 (of record) (“Those willing to pay more can appear higher

blind reliance on dictionary definitions is that the words at issue are often susceptible to widely varying meanings, depending on the context in which they are used. Take as an example the phrase “black sheep.” If one were to take the definitions of “black” and “sheep” separately, the phrase would literally mean a very dark farm animal. While such a definition would make sense in the sentence, “There are black sheep in the pasture,” it would be totally off the mark in the sentence, “Andy is the black sheep of the family.”

Here, both Overture’s and Google’s proposed definitions find support in the dictionaries cited by the parties. For “accordance,” the dictionaries cited by the parties variously use the words “agreement,” “conformity,” or “harmony” to define this word. Google has selected “conformance” as the word best suited to define “accordance,” in the context of the ’361 patent, while Overture points to “agreement.” For “determined,” the parties again look to different parts of the cited dictionary definitions. Google borrows from definitions that use the word “establish,” while Overture looks to the word “ascertain.”²² For “corresponding,” Google relies on definitions that require conformity, while Overture asserts that mere similarity suffices.

But when viewed in the context of the invention described by the inventors in the specification, only Google’s position – that the order of the search listings must match the bid amounts – gives the correct meaning to the terms. *See Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1300 (Fed. Cir. 2003) (“the correct meaning of a word or phrase is informed only by considering the surrounding text.”). Indeed, as explained below, Overture’s purely dictionary-derived constructions are so vague as to render the terms meaningless and ultimately, invalid for indefiniteness.

2. Overture’s definitions would render the claims invalid as being indefinite to the extent they seek to broaden the scope of these terms beyond strict ordering

Overture’s proposed definitions for “corresponding to” and “determined using” should be

in the search results.”).

²² Overture argues that Google’s definition improperly replaces “using” with “by.” The requirement of strict ordering, however, derives from the word “determined” itself, which Google defines as “established.” When an appellate court instructs that an issue be “determined using” a three-part test, surely it does not contemplate that the trial court might consider the three prongs of that test, but then conclude that some fourth factor (never mentioned by the appellate court) outweighs the result compelled by the first three. There may be other possible definitions for “determined using,” when it is considered in isolation, but Google’s definition is the one that

1 rejected as rendering the claims invalid for indefiniteness under 35 U.S.C. § 112, ¶ 2. “The
 2 primary purpose of the definiteness requirement is to . . . give notice to the public of the extent of
 3 the legal protection afforded by the patent . . .” *All Dental Prodx, LLC v. Advantage Dental*
 4 *Prods., Inc.*, 309 F.3d 774, 779 (Fed. Cir. 2002). Claims are indefinite if they are not stated with
 5 “sufficient clarity that the metes and bounds thereof can be determined.” *Kemode Mfg. Co. v.*
 6 *United States*, 347 F.2d 315, 319 (Ct. Cl. 1965). Although limitations may sometimes be defined
 7 using words of degree (such as “about” or “substantially”) that do not convey numerical
 8 specificity, “[d]efiniteness problems often arise when words of degree are used in a claim.”
 9 *Seattle Box Co. v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 826 (Fed. Cir. 1984). In
 10 that event, the Court must “determine whether the patent’s specification provides some standard
 11 for measuring that degree.” *Id.*

12 Overture’s definitions of “corresponding to” and “determined using” flunk this test. Both
 13 definitions seek to expand the ordering of search listings beyond strict ordering. According to
 14 Overture, “corresponding to” only requires that the order of the search listings must be “similar”
 15 to that of the bid amounts. And “determined using” only requires that the order of the search
 16 listings is “ascertained by an analysis that utilizes” the bid amounts. Neither the specification
 17 nor Overture’s Opening Brief explains what either of these definitions means, or how much
 18 ordering is enough. Those proposed definitions therefore fail to provide the standard required by
 19 *Seattle Box* for measuring degree and do not provide the threshold clarity required by paragraph
 20 2 of section 112 to place the public on notice about the metes and bounds of the invention.²³

21 3. The specification supports Google’s constructions

22 As the Federal Circuit recently explained,

23 Words often have different meanings to different people and in different contexts,
 24 accounting for the multiple ordinary meanings found in dictionaries. Dictionary
 25 definitions, while reflective of the ordinary meanings of words, do not always
 associate those meanings with context The words used in the claims must be
 considered in context and are examined through the viewing glass of a person skilled

26 “is most consistent with the use of the words by the inventor.” *Texas Digital*, 308 F.3d at 1203.

27 ²³ It appears that Overture is conceding that “in accordance with” means that the search listings
 must be in the same order as the bid amounts. If so, the parties are in substantive agreement,
 28 though they disagree over the language that best expresses this meaning. However, if Overture
 is advocating some broader meaning for “in accordance with,” then the indefiniteness arguments
 stated above apply with equal force to its definition for “in accordance with.”

1 in the art.

2 *Ferguson Beauregard/Logic Controls v. Mega Systems, LLC*, 350 F.3d 1327, 1339 (Fed. Cir.
3 2003).

4 Again and again, the specification explains that the order of the search listings *must*
5 conform to the order of the bid amounts, as proposed by Google's definitions. The summary of
6 invention could not be more clear:

7 *The higher the bid, the more advantageous the placement* in the search result list that
8 is generated when the bidded search term is entered by a searcher using the search
9 engine. *The search result list is arranged in order of decreasing bid amount*, with
10 the search listing corresponding to the highest bids displayed first to the searcher.

11 5:35-40 (emphasis added);²⁴ *see also* 9:42 ("higher bids receive more advantageous
12 placement").²⁵

13 Moreover, the only way to achieve the stated purpose of the invention is to arrange the
14 order of the search listings in the same order as their bid amounts. This is the only way to ensure
15 that the advertiser can "control" (3:51), "easily predict" (5:7), and "pinpoint" (5:11) the
16 placement of its search listing. Any other ordering scheme would be inconsistent with the '361
17 abstract's bold assertion that "[a] higher bid by a network information provider *will result* in a
18 higher rank value and a more advantageous placement." Abstract (emphasis added). The
19 abstract states that it describes the "present invention" itself, *id.*, rather than a preferred
20 embodiment. *SciMed*, 242 F.3d at 1343 (specification's description of the "present invention" is
21 "strong evidence" for purposes of claim construction).²⁶

22 The *only* passage from the specification upon which Overture relies states, "When an
23 Internet user enters the search terms in a search engine query, the search engine will generate a
24 search result list with the web site promoter's position influenced by *one or more parameters*

24 Notably, the quoted text does not purport to describe a "preferred" embodiment, in contrast to
the very next sentence. *Compare* 5:40-42 with 5:35-40; *compare also* 9:42-45 with 9:45-49.

25 Again, the *following* sentence is described as applying to a "preferred embodiment," but the
explanation of the method of ordering is not so limited. 9:45-49.

26 The Federal Circuit requires district courts to walk a fine line in construing claims, reading the
specification to understand and breathe life into claim terms but not importing new limitations
from the specification into the claims. Overture would have the Court avoid reading the
specification at all to avoid improper importation of limitations. This is error. Similarly, it
would be error to read every nuance of the specification into the claims. Google's claim
interpretation takes a middle ground. Google looks to the specification to see how the inventors
contemplated using bid amounts to determine the ordering of search results.

defined by the promoter.” 4:60-64 (Overture’s emphasis). But Google’s definition does not preclude reliance on multiple factors. So long as an ordering algorithm never results in an order that was contrary to the order of the bid amounts, it can rely on many factors. For example, one might order search listings first by bid amounts and use time of submission to resolve situations where two advertisements have identical bid amounts. Multi-factor ordering schemes of this sort – in which the resulting orders are always consistent with the order demanded by one primary factor – are commonplace (e.g., alphabetical ordering, which examines initially only the first letter in each word and considers second and subsequent letters only in the event of a “tie” that results when two words begin with the same letter) and are described in the specification and the claims. *See, e.g.*, 18:23-26 (describing a preferred embodiment where, in the event of a bidding tie, the search listing for which the bid was first received is placed first); *see also* 26:8-18 (claim 19) (claims with the same bid amount are ordered by creation time). Therefore, the definitions proposed by Google are both consistent with the ordinary and abstract dictionary meaning of the terms as well as the specification, while Overture’s are not.

Finally, contrary to Overture’s arguments, claim differentiation does not counsel against Google’s construction, because claims 52, 63 and 64 all vary in scope under Google’s constructions, as do claims 30, 46 and 47. Every claim, including claims 30 and 52, requires that the search listings be positioned in the same order as their respective bid amounts. Claims 46 and 63 require that the claims be ordered *from highest to lowest* bid amounts. Arranging listings from *lowest to highest* bid amounts therefore falls within the scope of the ordering limitations in claims 30 and 52, but not claims 46 and 63.²⁷ Claims 47 and 64 require that each search listing be assigned a “rank value,” and that the rank value order correspond to the bid amount order. Thus, if the search listing with the *highest* bid amount is assigned the *lowest* rank value, and so on, that is outside the scope of claims 47 and 64, while it may be within the scope of claims 30, 46, 52 and 63.

²⁷ This reverse ordering scheme is not inconsistent with the specification’s repeated admonition that higher bid amounts will result in more advantageous placement, because in some (admittedly rare) situations the most “advantageous” position may be the last position. For example, a search result list might be presented as a “top ten” list, with the tenth “best” search listing presented first, followed by the ninth, and so on, with the “best” search listing presented

1 In any event, claim differentiation is an interpretative guideline, not a rigid rule. *See*,
 2 *e.g.*, *North Am. Vaccine, Inc. v. American Cyanamid Co.*, 7 F.3d 1571, 1577 (Fed. Cir. 1994)
 3 (“the dependent claim tail cannot wag the independent claim dog”). As the Federal Circuit has
 4 explained,

5 That the patentee chose several words in drafting a particular limitation of one
 6 claim, but fewer (though similar) words in drafting the corresponding limitation in
 7 another, does not mandate different interpretations of the two limitations, since
 defining a state of affairs with multiple terms should help, rather than hinder,
 understanding.

8 *Kraft Foods, Inc. v. International Trading Co.*, 203 F.3d 1362, 1368 (Fed. Cir. 2000).

9 **E. “in response to”**

10 The claim language and the context supplied by the specification confirm that a
 11 “response,” as that term is used in the patent, must include the search results the searcher is
 12 looking for – i.e. must be in fulfillment of the searcher’s search, as proposed by Google. *See*,
 13 *e.g.*, 22:60-62 (claim 1, a search result list must be generated “in response to” a searcher’s
 14 search). As the specification explains, that means the search engine should “prioritize results in
 15 accordance with *consumers’ preferences*.” 2:65-67 (emphasis added). As a result, the searcher
 16 “find[s] companies or businesses that offer the products, services, or information *that the*
 17 *consumer is seeking*.” 3:60-62 (emphasis added).

18 Overture’s definition fails to acknowledge the context of the claimed invention.
 19 According to Overture, *anything* delivered in reaction to a searcher’s search request is “in
 20 response to” that request. For example, if the search engine crashes, presumably the standard
 21 “This page cannot be found” error message²⁸ would fall within the scope of Overture’s definition
 22 of a “response to” a searcher’s request.

23 **F. “database”²⁹**

24 Overture’s definition of this term is too narrow, as well as inconsistent with the

25 last.

26 ²⁸ *See* <<http://www.cand.uscourts.gov/foo.html>> (the web page this link points to does not exist,
 and thus will lead to a “not found” error message).

27 ²⁹ Overture proposes a longer definition for the term “account database.” Neither party identified
 28 “account database” as a disputed term; Overture added its definition of “account database”
 during the meet-and-confer process that led to the filing of the Joint Claim Construction
 Statement. Google does not believe that a special definition for “account database” is necessary.

1 specification. First, by its reference to “related data,” Overture may be attempting to limit the
 2 term “database” to certain specific, high-end databases called “relational databases.” In a
 3 relational database, data concerning the same subject matter may be stored in two or more
 4 different “tables,” and queries that depend on the “relations” between the data in the tables can
 5 be made using an appropriate query language (such as, “structured query language”).³⁰

6 The term “database” is a technical term, and thus Federal Circuit cases encourage the
 7 Court to refer to treatises or textbooks to better understand its ordinary meaning. *Pitney Bowes,*
 8 *Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1309 (Fed. Cir. 1999). The classic database
 9 textbook by C.J. Date explains that a “database system” is “nothing more than a computer-based
 10 recordkeeping system.” Exh. 25 at 3. The Chamber Science and Technology Dictionary defines
 11 a database as a “[c]ollection of structured data independent of any particular application.” Exh.
 12 26 at 228. Even the Elmasri and Navathe textbook cited by Overture explains that a database can
 13 take many forms:

14 You may have recorded this data in an indexed address book, or you may have
 15 stored it on a diskette using a personal computer and software such as DBASE III or
 16 Lotus 1-2-3. This is a collection of related data with an implicit meaning and hence
 17 is a database.

18 Exh. 27 at 3. None of these definitions limits “database” to any particular class of databases,
 19 such as relational databases.

20 Moreover, the specification confirms that the inventors intended a broad meaning for the
 21 term “database.” The inventors describe the World Wide Web as “a unique distributed database
 22 designed to give wide access to a large universe of documents.” 1:44-45. As the inventors note,
 23 documents on the web are “dispersed across countless individual computer systems” and the
 24 database that is the web “has no recognizable organization or morphology.” 1:51. More often
 25 than not, web pages are *not* stored in relational databases.³¹

26 Second, to the extent that Overture is arguing that advertisers must be able to access,

27 An account database is a database of accounts.

28 ³⁰ See generally <[http://hotwired.lycos.com/webmonkey/99/13/index1a_page2.html?](http://hotwired.lycos.com/webmonkey/99/13/index1a_page2.html?tw=backend)
 <[tw=backend](http://hotwired.lycos.com/webmonkey/99/13/index1a_page2.html?tw=backend)> (tutorial on relational databases).

³¹ See <http://ourworld.compuserve.com/homepages/ken_north/dsud_ddw.htm> (describing a
 relational database that can be used to store web pages, in contrast to the “traditional method of
 organizing Web pages” in “individual files managed by the operating system”).

1 manage, and update their information in an “account database” by computer, it is incorrect. A
 2 “database” need not be designed to be manageable or updateable – indeed, the World Wide Web,
 3 has “no recognizable organization or morphology,” 1:51, and thus cannot readily be “managed.”
 4 In sum, the ordinary meaning of the term “database,” as informed by the ’361 specification, is
 5 simply “a computer based system for recording and maintaining information.”

6 **G. “deducted from an account”**

7 The Court’s construction of this term is relevant to the infringement analysis because
 8 Google does not require that AWS advertisers use prepaid accounts. Instead, AWS generally
 9 keeps track of click-throughs, and generally charges advertisers when they have exceeded their
 10 credit limit.

11 The New Oxford Dictionary of English defines “deduct” to mean to “subtract or take
 12 away (an amount or part) from a total: *tax has been deducted from the payments.*” Exh. 28 at
 13 480 (italics in original). Webster’s New World College Dictionary offers a similar definition.
 14 Exh. 29 at 360 (“to take away or subtract (a quantity)”). Merriam-Webster’s On-Line Dictionary
 15 focuses on the same two points – *subtracting* from a *total*. Exh. 30.

16 The inventors use “deduct” specifically to refer to prepaid accounts (that is, the “total”
 17 from which one subtracts must be positive):

18 The bid amount 358 preferably is a money amount bid by an advertiser for a listing.
 19 This money amount is *deducted from the advertiser’s prepaid account* or is
 20 *recorded for advertiser accounts that are invoiced* for each time a search is executed
 by a user on the corresponding search term and the search result list hyperlink is
 used to refer the searcher to the advertiser’s web site.

21 13:4-9 (emphases added). Thus, while bid amounts are “deducted” from prepaid accounts,” they
 22 are “recorded” for credit-based accounts.³²

23 **H. “account record”**

24 Google believes that the terms “account” and “record,” as used in the ’361 patent, simply
 25 have their ordinary meanings.³³ Nothing in the specification suggests otherwise – Overture’s

26
 27 ³² Overture argues that this portion of the specification supports its construction, because
 Google’s construction fails to include the disclosed idea of invoiced, non-prepaid accounts.
 However, many of the claims do not include the “deduct” limitation, and thus *those* claims may
 28 include non-prepaid accounts. See, e.g., 28:10-52 (claim 52).

³³ Google’s main concern with Overture’s definition was whether Overture was perhaps

Opening Brief fails to cite *anything* from the specification. Google believes that its proposed construction better captures the meaning of the term “account record,” but does not specifically take issue with Overture’s construction. Overture appears likewise merely to prefer its own choice of words. Google respectfully suggests that the proper course of action for the Court may simply be to declare that no construction is necessary for this term.

I. “from a/the searcher”

The purported invention of the ’361 patent relates to *searches* conducted with a *search engine*. See Title. The ’361 patent is concerned with and describes only one type of search – a search using a search engine. In this context, a “searcher” is one who uses a search engine – a point confirmed by the patent’s consistent description of a “searcher” as one who uses a search engine.³⁴ One skilled in the art would thus understand that “from a/the searcher” means “input by the individual using the search engine to perform a search.”

V. CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court adopt Google’s (and reject Overture’s) proposed constructions of the disputed claim terms.

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attempting implicitly to alter the meaning of the claim term, thereby artificially narrowing the term. Having reviewed Overture’s Opening Brief, Google now believes that the parties’ dispute over the term “account record” amounts to no more than a difference of opinion concerning the best words to express a simple idea.

³⁴ 5:25-27 (“each time search clicks on the . . . listing in the search result list generated by the search engine”); 5:37 (“searcher using the search engine”); 6:4-5 (“when the search term is entered into the query box on the search engine by the searcher”); 10:9-10 (“The searchers may access, through their browsers 16, a search engine web page 36 residing on web server 24.”); 10:13-14 (“the searcher may query the search engine web server”); 17:19-20 (“a remote searcher accesses the search query page on the search engine web server”).