

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

VASUDEVAN SOFTWARE, INC.,  
Plaintiff,  
v.  
MICROSTRATEGY INC.,  
Defendant.

No. C 11-06637 RS  
No. C 11-06638 RS

**CLAIM CONSTRUCTION ORDER**

VASUDEVAN SOFTWARE, INC.,  
Plaintiff,  
v.  
TIBCO SOFTWARE INC.,  
Defendant.

I. INTRODUCTION

Plaintiff Vasudevan Software Inc. (“VSi”) alleges that the software products of defendants Microstrategy Inc. and TIBCO Software Inc. infringe divisional U.S. Patent Nos. 6,877,006 (“the ’006 patent”), 7,167,864 (“the ’864 patent”), 7,720,861 (“the ’861 patent”) and 8,082,268 (“the ’268 patent”).<sup>1</sup> Pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc), *aff’d*, 517 U.S. 370 (1996), and Patent Local Rule 4-3, the parties have presented three

<sup>1</sup> Three of those patents were construed in part during proceedings previous action by VSi against defendants IBM and Oracle. *See Vasudevan Software, Inc. v. Int’l Bus. Mach. Corp.*, No. C 09-5897, 2011 WL 196884 at \*1 (N.D. Cal. Jan. 20, 2011) (claim construction order).

1 terms found in the claims of the patents for construction by the Court.<sup>2</sup> In consideration of the  
2 briefing, the arguments presented at the *Markman* hearing, and for all the reasons set forth below,  
3 the disputed terms are construed as follows.

4 II. BACKGROUND

5 The patents in suit relate to business intelligence software technology, and specifically, an  
6 alleged invention for dynamically<sup>3</sup> creating, updating, and securing an online analytical processing  
7 (“OLAP”) cube. The parties agree that “OLAP cube” means a “data structure having more than two  
8 dimensions that provides online analytical processing.” In other words, it is an analysis tool for  
9 capturing data from “disparate databases” (a disputed claim term) and making the information  
10 available to display to the user. It might be used, for example, to analyze the sales results for  
11 specific items, periods, and locations. According to the parties, one prior art limitation of OLAP  
12 technology was that data residing in different databases were often stored in incompatible formats or  
13 schemas.<sup>4</sup> Where disparate databases were involved, an OLAP cube could not be constructed  
14 dynamically on “live” data. Instead, the data from disparate databases needed to be transformed  
15 into a compatible format ahead of a user’s request and stored in an intermediate data repository  
16 described as a data warehouse. Therefore, a business organization might extract data from disparate  
17 databases each night and store the results in a data warehouse. In that case, any resulting OLAP  
18 cube constructed from data in the warehouse would consist of “stale” data. By contrast, one aspect  
19 of the claimed invention involves creating the OLAP cube dynamically in response to a user’s  
20 request. Thus, data from disparate databases are accessed directly to assemble the OLAP cube  
21 without going through an intermediate repository of stale data.

22 III. LEGAL STANDARD

23 \_\_\_\_\_  
24 <sup>2</sup> In their opposition brief, defendants agreed to give the terms “3-dimensional visualizations” and 3-  
25 D visualizations” their plain and ordinary meaning, eliminating dispute. The parties also agreed to  
26 the definition of “OLAP cube,” another term initially subject to dispute. MicroStrategy alone  
27 contests the final two terms to be construed in this order.

28 <sup>3</sup> The parties agree that “dynamically” means “at run time in response to an ad hoc user query or  
request.” The parties also agree that “database” means “a structured set of data.”

<sup>4</sup> There does not appear to be debate that, in this context, “schemas” define “aspects of the database,  
such as attributes (fields) and domains and parameters of the attributes.” MICROSOFT COMPUTER  
DICTIONARY 421 (3d ed. 1997).

1 Claim construction is a question of law to be determined by the Court. *Markman*, 52 F.3d at  
2 979. “Ultimately, the interpretation to be given a term can only be determined and confirmed with a  
3 full understanding of what the inventors actually invented and intended to envelop with the claim.”  
4 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (quoting *Renishaw PLC v. Marposs*  
5 *Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)). Accordingly, a claim should be  
6 construed in a manner that “most naturally aligns with the patent’s description of the invention.” *Id.*

7 The first step in claim construction is to look to the language of the claims themselves. “It is  
8 a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the  
9 patentee is entitled the right to exclude.’” *Phillips*, 415 F.3d at 1312 (quoting *Innova/Pure Water,*  
10 *Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). A disputed claim  
11 term should be construed in a manner consistent with its “ordinary and customary meaning,” which  
12 is “the meaning that the term would have to a person of ordinary skill in the art in question at the  
13 time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips*, 415  
14 F.3d at 1312-13. The ordinary and customary meaning of a claim term may be determined solely by  
15 viewing the term within the context of the claim’s overall language. *See id.* at 1314 (“[T]he use of a  
16 term within the claim provides a firm basis for construing the term.”). Additionally, the use of the  
17 term in other claims may provide guidance regarding its proper construction. *Id.* (“Other claims of  
18 the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment  
19 as to the meaning of a claim term.”).

20 A claim should also be construed in a manner that is consistent with the patent’s  
21 specification. *See Markman*, 52 F.3d at 979 (“Claims must be read in view of the specification, of  
22 which they are a part.”). Typically, the specification is the best guide for construing the claims. *See*  
23 *Phillips*, 415 F.3d at 1315 (“The specification is . . . the primary basis for construing the claims.”);  
24 *see also Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (“[T]he  
25 specification is always highly relevant to the claim construction analysis. Usually, it is dispositive;  
26 it is the single best guide to the meaning of a disputed term.”). In limited circumstances, the  
27 specification may be used to narrow the meaning of a claim term that otherwise would appear to be



No.	Claim term	VSi's construction	Defendants' construction
1.	disparate [] databases	incompatible databases having different schemas	databases having an absence of compatible keys or record identifier (ID) columns of similar value or format in the schemas or structures of the database that would otherwise enable linking data within the constituent databases

The parties debate the appropriate scope of the limitation “disparate databases.” It appears, among other places, in claims 1-2 of the ’006 patent, directed to “accessing with a computer a plurality of disparate digital databases and retrieving with a computer requested data from such databases.” ’006 patent, cols. 13:29-32, 14:4-7. The meaning of “databases,” as noted above, is settled. *See supra* note 3. The parties’ positions also reflect a degree of general consensus that “disparate” implies incompatibility, although there is dispute as to how specifically to express that understanding. VSi proposes “*incompatible* databases having different schemas” (emphasis added), whereas defendants urge “an absence of *compatible* keys or record identifier (ID) columns of similar value or format in the schemas or structures ... that would otherwise enable linking data within the constituent databases” (emphasis added).<sup>5</sup>

VSi claims support for its position in the intrinsic record. Specifically, it notes that emphasizes that the specifications for all four patents-in-suit summarize the inventions thusly: “The present invention, for the first time, assembles an OLAP (online analytical processing) view of data (i.e., an OLAP cube) at run time, in response to a data query by a user, by accessing a plurality of incompatible source databases.” *See, e.g., id.* at cols. 2:38-42. VSi also notes that the ’006 patent’s specification speaks of “incompatible source databases,” comprising “any database type, including SQL, relational, object oriented, multi-dimensional, and flat databases.” *Id.* at cols. 2:38-42, 3:1-3. VSi also notes that the U.S. Patent & Trademark Office (PTO) appeared to equate “incompatible databases” with “disparate digital databases” in certain materials created during prosecution of the

<sup>5</sup> Defendants actually go a step further, and argue that VSi intended “incompatible” to mean something other than “disparate,” on a claim differentiation theory. Given, however, that “compatibility” figures prominently in defendants’ own construction of the term “disparate,” that argument is inconsistent and may be disregarded.

1 patent, directed to showing similarities between the pending claims of the '268 patent and VSi's  
2 already-issued '864 patent. (*See* Exh. 20 to Enger Decl. in Supp. of VSi's Br. at VSI0101882).  
3 Even assuming that were true, however, it is of little consequence as there does not appear to be a  
4 substantive disagreement between the parties concerning the requisite of "incompatibility."<sup>6</sup> The  
5 question is how narrowly or specifically that requirement should be drawn to reflect the  
6 understanding of those reasonably skilled in the art.

7 Defendants predicate their proposed construction on a statement made by VSi during  
8 prosecution of the '006 patent. The PTO initially rejected VSi's claims as obvious in light of U.S.  
9 Patent No. 6,516,324, which, it noted, teaches a method of "accessing with a computer a plurality of  
10 digital databases," wherein "the plurality of databases are incompatible to each other." (Exh. A to  
11 Pak Decl. in Supp. of Defs.' Br. at VSI0000239, 242). VSi responded by adding the limitation  
12 "disparate" to "digital databases" and arguing that the prior art "access[ed] only one singular  
13 database – the multidimensional database – not a plurality of disparate databases," as in the '006  
14 application. (Exh. 21 to Enger Decl. in Supp. of VSi's Br. at VSI0000267). As VSi went on to  
15 explain to the PTO:

16 *The disparate nature of the above databases refers to the absence of compatible keys*  
17 *or record identifier (ID) columns of similar value or format in the schemas or*  
18 *structures of the database that would otherwise enable linking data within the*  
19 *constituent databases. An example of such a common key is a social security number*  
20 *.... In embodiments of Applicant's invention, such a common key is not necessary.*  
21 *The disparate nature extends, for example, to the type of database (Oracle, IBM DB2,*  
22 *Microsoft SQL Server of Object Databases) and the structure, schema, and nature of*  
23 *the databases (i.e., type of the data fields in various tables of the constituent*  
24 *databases).*

21 (*Id.* at VSI0000265) (emphasis in italics added, underline in original). Defendants argue that  
22 plaintiff has clearly adopted this position, given that VSi reiterated it to the PTO in the course of  
23 prosecuting the '861 patent, again to distinguish prior art. (Exh. D. to Pak Decl. in Supp. of Defs.)  
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26 <sup>6</sup> At argument, VSi also heavily emphasized that in a prior litigation, IBM and Oracle stipulated to  
27 its proposed construction. While perhaps of some import, the prior stipulation is hardly dispositive,  
28 and as counsel conceded, could not bind defendants in this case on a collateral estoppel theory  
without violating their due process rights. *Verizon Cal.*, 326 F. Supp. 2d at 1069.

1 Br. at VSI0011495). Defendants also argue that VSi relied upon the foregoing in prosecuting the  
2 '006 and '861 patents, and must be bound to their representation.

3 The Federal Circuit has held that patentees should be “bound by representations and actions  
4 that were taken in order to obtain the patent.” *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d  
5 1376, 1381 (Fed. Cir. 2011) (citations omitted); *Springs Window Fashions LP v. Novo Indus., L.P.*,  
6 323 F.3d 989, 995 (Fed. Cir. 2003) (“The public notice function of a patent and its prosecution  
7 history requires that a patentee be held to what he declares during the prosecution of his patent. A  
8 patentee may not state during prosecution that the claims do not cover a particular device and then  
9 change position and later sue a party who makes that same device for infringement”). To be bound,  
10 however, the patentee must have “clearly set forth a definition of the disputed term in either the  
11 specification or the prosecution history.” *Typhoon Touch*, 659 F.3d at 1382 (citing *CCS Fitness,*  
12 *Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002)). VSi replies that it has not done so  
13 here, and stresses that the prosecution history “often lacks the clarity of the specification and thus is  
14 less useful for claim construction purposes.” *Phillips*, 415 F.3d at 1317. *See also Grober v. Mako*  
15 *Prods., Inc.*, 686 F.3d 1335, 1341 (Fed. Cir. 2012) (“ongoing negotiations between the inventor and  
16 the PTO” will “often produce[] ambiguities”). In particular, it points to the final sentence of the  
17 quoted passage, which states that the claimed “disparate” nature of the databases encompasses  
18 distinct “types” of database, such as those developed by different commercial vendors (Oracle, IBM,  
19 Microsoft, etc.). In its papers and at argument, VSi emphasized the need to preserve this concept in  
20 any appropriate construction of the claim term, and argues that the inclusion of commercial vendors  
21 renders the definition it proffered to the PTO unclear or ambiguous.

22 The trouble with VSi’s position is that defendants’ construction is *not* necessarily  
23 inconsistent with the distinction drawn between databases supplied by different vendors – as VSi’s  
24 own statements to the PTO make quite clear. (Exh. 21 to Enger Decl. in Supp. of VSi’s Br. at  
25 VSI0000265) (“The disparate nature extends, *for example*, to the type of database...” (emphasis  
26 added)). Neither side suggests that different vendors’ databases have identical record identifiers or  
27 formats within the structures or schemas organizing the data, and VSi’s own proposed construction  
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1 apparently preserves vendor-specific incompatibility by making reference to different “different  
 2 schemas.” Furthermore, the prosecution history reflects that VSi inserted the word “disparate” in  
 3 each of its claims after a rejection, and adopted the definition of “disparate” set forth above. While  
 4 precedent sets a fairly high bar for disavowal during prosecution, requiring “a clear and  
 5 unmistakable disavowal of scope,” here that requirement appears to be met. *Purdue Pharm. L.P. v.*  
 6 *Endo Pharms. Inc.*, 438 F.3d 1123, 1136 (Fed. Cir. 2006). Although VSi insists that defendants  
 7 have put undue emphasis on the particular passage set forth above and maintains that it primarily  
 8 distinguished the Jones prior art on other grounds, a review of VSi’s response to the PTO’s Office  
 9 Action rejecting the ’006 applications’ claims reveals that it distinguished Jones on multiple  
 10 grounds, including the “disparate” limitation. (*See* Exh. 21 to Enger Decl. in Supp. of VSi’s Br. at  
 11 VSI0000267). There is nothing ambiguous about the statement VSi made to the PTO; its definition  
 12 of the term “disparate” is relatively succinct, and clear. It is unmistakable evidence of how VSi  
 13 understood the scope of its claims, and the PTO apparently relied on those representations in  
 14 granting the ’006 patent. Accordingly, the term “disparate databases” is construed to mean,  
 15 “databases having an absence of compatible keys or record identifier columns of similar value or  
 16 format in the schemas or structures that would otherwise enable linking data.” Should any of the  
 17 terms contained in the construction set forth above require further clarification, such matters may be  
 18 resolved later in the proceedings.

No.	Claim term	VSi’s construction <sup>7</sup>	MicroStrategy’s construction
20	2.	a persistent repository	a repository of the responsive source data stored in a permanent or semi-permanent state
21			repository of information stored on a disk or other permanent storage device

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 23 The next term for construction, “a persistent repository,” appears in claims 1 and 9 of the  
 24 ’268 patent. Those claims cover a method for “dynamically assembling a multidimensional view of  
 25 at least a portion of said responsive data source without first accessing a persistent repository of said

26 <sup>7</sup> At oral argument, VSi submitted a newly amended construction, set forth in the table above.  
 27 Defendants, however, were unable to agree to that proposal, as it does not significantly narrow the  
 28 parties’ outstanding disputes. Initially, VSi urged “a storage medium containing non-transient data.”



1 responsive source data created after the data retrieval request is received,” and “dynamically  
2 assembling a slice of an OLAP cube using at least a portion of said responsive source data without  
3 first accessing a persistent repository of said responsive data created after the data retrieval request  
4 is received.” ’268 patent, cols. 13:19-25, 14:22-26. The parties’ disagreements regarding the  
5 second claim term are: (1) whether “persistent” describes the data in the repository or whether it  
6 describes the storage device on which the repository is stored; and (2) whether “persistent” means  
7 “permanent,” “semi-permanent,” or “responsive.” VSi maintains that “persistent” refers to the  
8 “responsive” data in the repository, stored in a “permanent” or “semi-permanent” storage medium,  
9 whereas MicroStrategy contends that it describes a “permanent” form of storage.

10 VSi persuasively argues that the intrinsic evidence reflects a “data-centric” interpretation of  
11 “persistent repository.” Specifically, it points to the claims that recite “dynamically assembling a  
12 multidimensional view ... without first accessing a *persistent repository of said responsive source*  
13 *data.*” ’268 patent, cols. 13:19-23 (emphasis added). Obviously, to the extent VSi’s revised claim  
14 construction tracks the actual language of the claims, it is on firm ground. *Innova/Pure Water*, 381  
15 F.3d at 1115 (it is a “bedrock principle” that “the claims of a patent define the invention”). VSi also  
16 notes that the prosecution history refers to “[a] multidimensional database[] of stored or persisted  
17 retrieved data assembled a priori.” (Exh. 21 (10/29/03 Resp. to O.A.) to Enger Decl. in Supp. of  
18 VSi’s Br. at VSI0000265). Looking at the claims as a whole, and the purported improvements the  
19 alleged invention makes over the prior art, it is apparent that VSi’s understanding comports closely  
20 with the intrinsic record.

21 To the extent the parties resort to the extrinsic evidence, those materials do not militate one  
22 way or another. MicroStrategy insists that to computer scientists, “persistence” means “the storage  
23 of an object on a disk or other permanent storage device.” ALAN E. FREEMAN, THE COMPUTER  
24 GLOSSARY 312 (8th ed. 1998). VSi counters that “persistent” has a unique and well recognized  
25 meaning in computer science, and refers to “the property of data that continues to exist after a  
26 process accessing it has finished.” OXFORD DICTIONARY OF COMPUTING 377 (6th ed. 2008). Both  
27 sides appear to be correct: the word simply has different meanings depending on whether it refers to  
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1 data structures, or storage. To put the distinction slightly differently, persistent data need not exist  
2 in a permanent storage medium, as VSi’s revised construction reflects. The fact that one extrinsic  
3 reference suggests some connection between the persistence of data and its stored format is not  
4 dispositive where, as here, the storage medium simply does not appear to have any functional  
5 significance for purposes of VSi’s actual claims. Notably, in an attempted concession to  
6 MicroStrategy, VSi amended its construction to incorporate the limitation requiring a “permanent”  
7 or “semi-permanent” storage medium. MicroStrategy contends that the claims must be narrowed to  
8 encompass solely permanent forms of storage, while VSi argues that goes too far. VSi has the better  
9 part of the argument: there is scant, if any, intrinsic evidence to support such a limitation. It also  
10 does not appear that VSi has taken an inconsistent position in the prior litigation as to whether  
11 “persistent” may be equated with “permanent,” as defendant alternatively suggests.<sup>8</sup> *See Vasudevan*  
12 *Software*, 2011 WL 196884 at \*2 (“Plaintiff claims... that persistent describes ‘the nature of the  
13 data that populates the databases.’ The data, according to plaintiff, must be at least semipermanent.  
14 Therefore, plaintiff reasons, the opposite of persistent data is transient data.” (internal citations  
15 omitted)).

16 While it is true, as MicroStrategy suggests, that the application of ordinary grammatical rules  
17 would suggest that “persistent” modifies “repository,” *see HTC Corp. v. IPCom GmbH & Co., KG*,  
18 667 F.3d 1270, 1274-75 (Fed. Cir. 2012), that need not be strictly assumed where, as here,  
19 “persistent” has recognized, specialized meanings with respect to both data and storage formats, and  
20 the intrinsic record overall supports the conclusion that “persistent” chiefly describes the stored data.  
21 Finally, although MicroStrategy maintains that VSi’s construction is ambiguous, complicated, and  
22 unhelpful to the lay fact finder, those concerns appear to be somewhat overstated. For the reasons  
23 set forth above, “a persistent repository” is construed to mean “a repository of responsive source  
24 data stored in a permanent or semi-permanent state.”

25  
26 <sup>8</sup> To the extent VSi has arguably conflated the two terms, it has done so in a manner that supports its  
27 position that “persistent” modifies data, rather than the storage medium. (*See Exh. G. (Markman*  
28 *Tr.) to Pak Decl. in Supp. of Defs.’ Br. at 32:25-33:2) (“Data resides permanently. We went over  
that before. That’s an admission that in the database, the data has to be persistent.”).*

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No.	Claim term	VSi's construction	MicroStrategy's construction
3.	directly	no construction necessary; plain and ordinary meaning  <i>alternatively</i> , the retrieved data is accessed dynamically on demand by reading the data from the disparate databases  <i>and</i> , updating one or more of said plurality of incompatible databases by writing data to those databases in a manner consistent with the request to modify  <i>and</i> , the assembled multidimensional view/slice of an OLAP cube by writing data to the multidimensional view/slice in a manner consistent with the request to modify	without storing the data in an intermediate repository

The parties' disagreement as to the third claim term is relatively stark: VSi requests plain and ordinary meaning, or else three alternative proposals applicable to particular uses of the term. MicroStrategy, on the other hand, proposes a much narrower construction of the term "directly," specifically drawn to eliminate the possibility that intermediate storage might satisfy the claim. The term "directly" appears in claims 1 and 3 of the '861 patent, as well as claims 1 and 9 of the '268 patent. '861 patent, cols. 13:1-8, 14:4-12 ("viewing the OLAP cube formed from the retrieved data using the GUI, wherein the retrieved data is accessed dynamically on demand *directly* from the disparate digital databases" (emphasis added)); '268 patent, cols. 13:31-36, 14:32-37 ("in response to receiving the request to modify: [] directly updating one or more of said plurality of incompatible databases consistent with the request to modify; and [] directly updating the assembled multidimensional view consistent with the request to modify").

There appears to be general agreement among the parties that, in the context of the '861 patent, the claimed invention retrieves data from a plurality of disparate digital databases without

1 storing the data in a “pre-configured” intermediate database. That feature differentiated VSi’s  
2 alleged inventions from U.S. Patent No. 5,088,052 (“the Spielman prior art”), as VSi apparently  
3 argued to the PTO. VSi also made similar argument in connection with the prosecution of the ’861  
4 patent to distinguish the “Castelli” prior art. (*See* Exh. 34 to Pak Decl. in Supp. of Defs.’ Br. at  
5 VSI97920). *See also* ’268 patent col. 8:32-41 (“Since [VSi’s product] MIDaS’s data display utilizes  
6 data obtained directly from the raw database(s) and is not a processed form of the database (as in the  
7 case of OLAP), MIDaS is not encumbered by the limitation of traditional OLAP tools, namely, the  
8 inability to update the data in the database directly from the OLAP view.”).

9 Those arguments to the PTO, while undoubtedly of some significance under *Typhoon Touch*,  
10 659 F.3d at 1381, do not necessarily require the Court to replace a fairly straightforward term, such  
11 as “directly,” with a much more specific construction that applies only in some contexts within the  
12 asserted claims, as MicroStrategy urges. *See, e.g., Inverness Med.*, 309 F.3d at 1371 (terms must be  
13 construed consistently across all claims). To the extent that VSi’s claims are limited by the term  
14 “directly,” and do not require resort to an intermediate database, that limitation is fairly implied by  
15 the other claims in the asserted patents. Significantly, both parties agree the meaning of “directly” is  
16 not confined to that particular meaning everywhere in VSi’s asserted claims, and neither party  
17 contends that the limitation must be accorded some peculiar meaning, known only to those skilled in  
18 the art, and unavailable to laypeople. In light of the foregoing, it follows that the term “directly”  
19 requires no construction. To adopt MicroStrategy’s overly specific construction, even if sensible in  
20 the context of some claims, would merely confuse matters when imported into others. “Directly” is  
21 to be understood according to its plain and ordinary meaning.

## 22 V. CONCLUSION

23 The disputed claim terms of the patents-in-suit are hereby construed as set forth above.  
24 Where the order has identified terms that may require further construction, such matters shall be  
25 presented, if it becomes necessary, in the context of any dispositive motions or at the time of  
26 formulating jury instructions.

IT IS SO ORDERED.

Dated: 9/19/12



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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

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