

**IN THE UNITED STATES COURT
FOR THE DISTRICT OF DELAWARE**

LEADER TECHNOLOGIES, INC., a Delaware corporation,)	
)	CIVIL ACTION
)	
Plaintiff and Counterdefendant,)	No. 1:08-cv-00862-JJF
)	
v.)	
)	
FACEBOOK, INC., a Delaware corporation,)	
)	
Defendant and Counterclaimant.)	
)	

DEFENDANT FACEBOOK, INC.’S CLAIM CONSTRUCTION BRIEF

Steven L. Caponi (DE Bar #3484)
BLANK ROME LLP
 1201 N. Market Street
 Wilmington, DE 19801
 302-425-6400
 Fax: 302-425-6464
*Attorneys for Defendant and
 Counterclaimant Facebook, Inc.*

OF COUNSEL:
 Heidi L. Keefe (*pro hac vice*)
 Mark R. Weinstein (*pro hac vice*)
 Jeffrey Norberg (*pro hac vice*)
 Melissa H. Keyes (*pro hac vice*)
COOLEY GODWARD KRONISH LLP
 3000 El Camino Real
 5 Palo Alto square, 4th floor
 Palo Alto, CA 94306

Dated: December 23, 2009

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. PROCEDURAL HISTORY	1
III. BACKGROUND OF THE '761 PATENT.....	2
IV. APPLICABLE LAW	6
V. LTI'S REQUEST THAT THE COURT ABDICATE ITS LEGAL RESPONSIBILITY TO CONDUCT CLAIM CONSTRUCTION SHOULD BE REJECTED	8
VI. ARGUMENT	9
A. "Applications," "Workspace," "Web," "Context," "Environment"	10
1. "Application"	12
2. "Workspace"	12
3. "Web"	13
4. "Context"	13
5. "Environment"	14
B. "Metadata," "Context Information," "Change Information," "Change in access of the user"	15
1. "Metadata"	15
2. "Context information"	18
3. "Change information," "change in access of the user" and "based on the change"	19
C. "Dynamically"	20
D. "Accesses [the data]" "Employs the data"	22
1. "Accesses [the data]"	22
2. "Employs [the application and data]"	24
E. "Context Component," "Tracking Component," "Storage Component"	25
1. "Component"	25
2. "Tracking Component"	25
3. "Context Component"	28
4. "Storage Component"	29
F. "Ordering," "Ordering Information," "Arrangements," "Traversing" (Claim 17)	30

G.	Remaining Terms (File Storage Pointers, Association, Capturing, Create or Created, Generating, Indexing, Locating/Locate, Portable Wireless Device, Remote Location, Relational Storage Methodology, Relationship, Tagged, Updating)	34
1.	“Created/create” and “locating/locate”	34
2.	“Associated/Association/Associating”	35
3.	“Capturing”	35
4.	“File Storage Pointers”	36
5.	“Generating”	36
6.	“Many-To-Many Functionality”	37
7.	“Portable Wireless Device”	37
8.	“Relational Storage Methodology”	43
9.	“Relationship Data”	39
10.	“Remote Location”	44
11.	“Tagged”	44
12.	“Updating”	45
13.	Remaining Terms.....	45
VII.	CONCLUSION.....	45

TABLE OF AUTHORITIES

	Page(s)
FEDERAL CASES	
<i>American Patent Dev. Corp., LLC v. Movielink, LLC</i> , 637 F. Supp. 2d 224 (D. Del. 2009) (Farnan, J.)	7, 9
<i>Andersen Corp. v. Fiber Composites, LLC</i> , 474 F.3d 1361 (Fed. Cir. 2007).....	14
<i>Aristocrat Techs. Austl. Pty Ltd. v. Int’l Game Tech.</i> , 521 F.3d 1328 (Fed. Cir. 2008)	27, 30
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995) (en banc)	6, 7, 8
<i>Massachusetts Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software</i> , 462 F.3d 1344 (Fed. Cir. 2006).....	26
<i>Net MoneyIN, Inc. v. VeriSign, Inc.</i> , 545 F.3d 1359 (Fed. Cir. 2008)	27, 30
<i>O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.</i> , 521 F.3d 1351 (Fed. Cir. 2008)	7, 8, 9
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (en banc)	7, 8, 15
<i>Vitronics Corp. v. Conceptronic, Inc.</i> , 90 F.3d 1576, 1582 (Fed. Cir. 1996).....	7
<i>Welker Bearing Co. v. PHD, Inc.</i> , 550 F.3d 1090 (Fed. Cir. 2008).....	26, 27
<i>WMS Gaming v. International Game Tech.</i> , 184 F.3d 1339 (Fed. Cir. 1999).....	27, 28, 29
FEDERAL: STATUTES, RULES, REGULATIONS, CONSTITUTIONAL PROVISIONS	
35 U.S.C. § 112 ¶ 2.....	29, 30
35 U.S.C. § 112 ¶ 6.....	passim
OTHER AUTHORITIES	
Microsoft Computer Dictionary (5th ed. 2002)	12, 14, 33

I. INTRODUCTION

The fundamental purpose of claim construction is to interpret the claims as a matter of law so as to assist the trier of fact in understanding the scope of the patent. In line with this purpose, the constructions proposed by Facebook are straightforward and are derived directly from the intrinsic evidence and supported by a computer dictionary commonly relied upon by persons of ordinary skill in the art. By contract, Leader Technologies, Inc. (“LTI”) has adopted an approach of seeking to leave the trier of fact in the dark as to the meaning of its claims. LTI repeatedly acknowledges that one of ordinary skill in the art would adopt specific definitions for the disputed claim terms, but then stays mum as to what those definitions are. LTI cites previous few passages from its own patent to supports its arguments and repeatedly attempts to walk away from its own specification. This approach assists no one; instead, it guarantees confusion and, most likely a need to return repeatedly to the Court for guidance. Facebook respectfully submits that its straightforward approach of providing constructions that are directly supported by the patent specification is the correct one, and will be most helpful to the trier of fact.

II. PROCEDURAL HISTORY

LTI is currently asserting 27 claims from the single patent in this case. On December 3, 2009, in order to streamline this case prior to claim construction. Consequently, the Court ordered both parties to “agree to a set of representative claims or submit a proposal to the Court by December 4, 2009. . . .” Dec. 3, 2009 Minute Order. The parties did not reach agreement, so Facebook proposed a representative set of claims including independent claims 1 and 9 and dependent claims 4, 5, 10 and 12. *See* D.I. 177 at 1. LTI, by contrast, refused to select representative claims or make any proposals. *See* D.I. 176. If the Court were to now adopt the set of representative claims proposed by Facebook, the number of claim terms that would need to be construed would drop from 41 to 19. In fact, the Court could completely ignore all of the

below proposed constructions and arguments for “workspace,” “web,” “interrelated,” “interrelationship,” “locating,” “change in access of the user,” “in response to which,” “tagged,” “indexing,” “remote location,” “portable wireless device,” “ordering,” “ordering information,” “arrangements,” “traversing,” “generating,” “change information,” “many-to-many functionality,” “relational storage methodology” and “file storage pointers.”

III. BACKGROUND OF THE '761 PATENT

When Michael McKibben and Jeffrey Lamb applied for what became U.S. Patent No. 7,139,761 (“the ’761 patent”) in December 2003, they were not concerned with social networking or with anything about keeping people “in touch” with each other. In fact, there is no mention of social networking anywhere in the ’761 patent. They instead told the Patent Office that their alleged invention “is related to management and storage of electronic information,” and more particularly, “to new structures and methods for creating relationships between users, applications, files, and folders.” ’761 patent, Col. 1:20-24.¹ Even the title declares that the patent is concerned with a way to store and manage information: “Dynamic Association of Electronically Stored Information With Iterative Workflow Changes.”

The Background of the ’761 patent adamantly claims that existing methods of organizing data are “limited and fragmented” and “wholly inadequate” (col. 1:47-48, 51-53) because they relied on users themselves to make decisions about the categorization and placement of their documents and communications. They complained that “[t]he recipient must do all of the work of organization and categorization of the communications rather than the system itself do [sic] that work. Automation of the organization of communications is non-existent.” Col. 1:54-58. “File context,” they explained, “is limited to the decision made by the user about the folder in

¹ Unless otherwise noted, all citations in this brief to columns (“col.”) refer to the ’761 patent, which is attached as Exhibit 3 to the Declaration of Paul Andre in Support of Plaintiff Leader Technologies, Inc.’s Opening Claim Construction Brief (“Andre Decl.”) (D.I. 180).

which the file should be stored. The user decision does not adequately represent or reflect the true context of the file given that the file may contain information that could reasonable [sic] be stored in multiple folders.” Col. 2:29-34. The applicants believed the best way to address these perceived deficiencies was to free the user from the task of organization by creating “a communications tool that associates files generated by applications with individuals, groups and topical context *automatically*.” Col. 3:2-4 (emphasis added).

The ’761 patent purports to disclose a system in which data created by a user is automatically linked or tethered to the *user*. As explained in the Summary of the Invention:

The data management tool includes a novel architecture where the highest contextual assumption is that there exists an entity that consists of one or more users. The data storage model first assumes that files are associated with the user. Thus, data generated by applications is associated with an individual, group of individuals, and topical content, and not simply with a folder, as in traditional systems.

Col. 3:25-31. The summary goes on to describe a system in which a user enters a personal “workspace environment,” which the patent refers to as a “board,” then creates documents and files within that board using one or more applications. Col. 3:32-43. “Data created within the board is immediately associated with the user,” and this tethering “is captured in a form of metadata and tagged to the data being created.” Col. 3:44-45, 47-48. “The metadata automatically captures the context in which the data was created as the data is being created.” Col. 3:48-50.

Once the data has been created and the metadata tethered to the user, the user can then move to another workspace (or board) and access the same data from that new location. Critically, the system responds to the user’s movement by *automatically* making the data available in the new location. “As a user creates a context, or moves from one context to at least one other context, the data created and applications used previously by the user automatically

follows the user to the next context. The change in user context is captured dynamically.” Col. 4:1-5; *see also* col. 7:46-49 (“As users create and change their contexts, the data (e.g., files) and applications automatically follow, the shifts in context being captured dynamically in the context data.”). The user is therefore freed from making decisions about how or where its data is stored, and from manually updating the metadata when she moves to a new location. All of that is now left to the system, which ensures that a user’s documents and applications automatically “follow” the user as it moves from place to place.

The three basic steps described above (1-user creates data in a first workspace, 2-user moves to a second workspace, and 3-the system dynamically associates the data with the second workspace) are reflected in each independent claim. Claim 1, for example, reads,

1. A computer-implemented network-based system that facilitates management of data, comprising:

a computer-implemented context component of the network-based system for capturing context information associated with user-defined data created by user interaction of a user in a first context of the network-based system, the context component dynamically storing the context information in metadata associated with the user-defined data, the user-defined data and metadata stored on a storage component of the network-based system; and

a computer-implemented tracking component of the network-based system for tracking a change of the user from the first context to a second context of the network-based system and dynamically updating the stored metadata based on the change, wherein the user accesses the data from the second context.

A helpful way to think about what the '761 patent allegedly covers is through use of an example and analogy. Suppose a user creates a document (user-defined data) by opening Microsoft Word or Outlook (the application) while sitting at her desk at work, typing up the document (creating it) and then storing it in a folder (storage component). If she were then to go home and decide she needs the same document, she would have to remember where she filed the

document and then either go back there herself to retrieve it, or send someone else to get it by providing them with the title of the file and a map of where they could find it. But according to LTI, this process relies too heavily on the user's faulty memory and the oft-times random decisions the users make about where and how to store information. After all, the user could forget where it was. Or the user may have mislabeled the file so that the other person retrieving it could not find it, even with a map. LTI's proposed solution to these purported problems of having to rely on the user's description and memory was to take control away from the user. *See generally* '761 pat., Background of the Invention.

Instead of relying on the user to remember in which folder a document is stored or with which application it was created, the system disclosed in the '761 patent ensures that the data and the application used to create it would "immediately" be associated with that user upon creation. *See* col. 3:44-50; col. 9:50-56. That data and application then follow the user wherever she goes, so that they are always readily accessible without the user having to remember anything. *See* col. 4:1-5. In essence, under the system disclosed in the '761 patent, the user wears a backpack containing all the data she creates and all the information about that data (metadata). For example, say the user opens Microsoft Word (the application) and types a document (creates the user-defined data). As soon as that document is created, the document is automatically shoved into the backpack the user is wearing. *See* col. 9:50-56 ("Data created while the user is in the board is immediately associated with the user. . . ."). Now when the user goes home, the document and application go with her. However, not only does the backpack accompany her, it also makes note of the change in her location, *i.e.*, the fact that she is now "at home" instead of "in the office." *See* col. 4:1-5 ("As a user creates a context, or moves from one context to at least one other context, the data created and applications used previously by the user automatically

follows the user to the next context. The change in user context is captured dynamically.”). The benefit obtained, according to the applicants, is that the user did not have to do anything: she created her document and it followed her home, noting automatically (in metadata) the change in the user’s location without any user interaction whatsoever.

Every embodiment described in the specification and claimed in the patent contains this idea of tethering the user to the information she creates and the application she used to do so. All but one of the embodiments and claims of the ’761 patent follow the backpack analogy above. The only exception claim 17, which follows a variant “breadcrumb” analogy. In that analogy, the system essentially lays a trail of information (metadata) between the data and the user, a trail which commences at the moment the data is created and follows the user throughout her navigation through the system. In each location the user enters, her data is tethered to her by the string of “breadcrumbs” laid in each of the locations the user has visited. *See* claim 17 (“ . . . generating and processing data in the user environments . . . creating an association of the data *with the second user environment*. . . .”) (emphasis added). Thus, the user will always know exactly the single path to retrace (traverse) backwards in order to find the information. *See* claim 17 (“ . . . traversing the different arrangements of user environments . . . to locate the data associated with the user environments.”) This alternative method of organizing data is firmly rooted in the ’761 patent’s central theme: the user cannot be relied upon to remember all the locations of all of her data, and therefore must be tethered to her data in order to facilitate finding it later. Whether by “backpack” or by “breadcrumbs,” the central focus and purpose of the system in the ’761 patent is to follow, track and record everything the user does, including moving, without user intervention.

IV. APPLICABLE LAW

Claim construction is a pure question of law for the Court. *Markman v. Westview*

Instruments, Inc., 52 F.3d 967, 977-78 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). It is the Court's role to determine the appropriate construction of claims, and it is improper for the parties to present claim construction evidence, including expert testimony, to the jury. *See American Patent Dev. Corp., LLC v. Movielink, LLC*, 637 F. Supp. 2d 224, 230 (D. Del. 2009) (Farnan, J.) (citing *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361-63 (Fed. Cir. 2008)).

Claims in a patent are generally given “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc). When construing the claims of a patent, a court considers the literal language of the claim, the patent specification and the prosecution history. *Markman*, 52 F.3d at 979-80.

Federal Circuit law is equally clear that the patent specification is critically important in interpreting disputed claim language. As the court reaffirmed in *Phillips*, the specification is “always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.” 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)).

Although a claim term is generally given the meaning that a person of ordinary skill in the art would attach to it, this analysis cannot take place without regard to the patent specification. “Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Phillips*, 415 F.3d at 1313; *id.* at 1321 (“Properly viewed, the ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent.”). Additionally, “the specification may reveal a special definition

given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." *Id.* at 1316.

A court may also consider extrinsic evidence, including expert testimony, dictionaries and learned treatises, in order to assist it in understanding the underlying technology, the meaning of terms to one skilled in the art and how the invention works. *Id.*, at 1318-19; *Markman*, 52 F.3d at 979-81. However, extrinsic evidence is considered less reliable and less useful in claim construction than the patent and its prosecution history. *Phillips*, 415 F.3d at 1318-19 (discussing "flaws" inherent in extrinsic evidence and noting that extrinsic evidence "is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence").

V. LTI'S REQUEST THAT THE COURT ABDICATE ITS LEGAL RESPONSIBILITY TO CONDUCT CLAIM CONSTRUCTION SHOULD BE REJECTED

As to all but five of the more than 40 terms at issue in these claim construction proceedings, LTI offers no construction whatsoever. LTI and its expert instead urge the Court to give each of these terms its "plain and ordinary meaning," but do not identify what that so-called plain and ordinary meaning actually is. A refusal to construe these terms, or to select a representative set of claims, would virtually ensure that the parties will attempt to present claim construction evidence at trial.

It is an elementary principle of claim construction that "[w]ords of a claim are generally given their ordinary and customary meaning." *O2 Micro Int'l Ltd.*, 521 F.3d at 1360 (citing *Phillips*, 415 F.3d at 1312-13). One of the primary purposes of claim construction is to *identify* that meaning so it can be provided to the trier of fact. *Id.* at 1359 ("A claim construction order always dictates how the court will instruct the jury regarding a claim's scope."). LTI's assertion that the terms of the '761 patent should be given their "plain and ordinary meaning," without

actually identifying what that meaning is, represents nothing more than an empty statement of law that is unhelpful to the trier of fact.

The Federal Circuit's decision in *O2 Micro* is instructive. There the district court refused to construe the phrase "only if" from the patent-in-suit because it felt the phrase needed no construction. The district court's refusal did not end the dispute, and the parties presented evidence as to the meaning of that phrase to the jury. *Id.* at 1362. The Federal Circuit criticized the district court for its refusal to construe the disputed claim language, holding that "[w]hen the parties raise an actual dispute regarding the proper scope of these claims, the court, not the jury, must resolve that dispute." *Id.* at 1360. "In this case," the court held, "the 'ordinary' meaning of a term does not resolve the parties' dispute, and claim construction requires the court to determine what claim scope is appropriate in the context of the patents-in-suit." *Id.* at 1361.

LTI's request that this Court provide no construction for dozens of claim terms will simply force the parties to renew their arguments at trial, inviting the jury to come up with its own constructions of these terms. This Court acknowledged this problem in *American Patent Development Corp., LLC v. Movielink, LLC, supra*, 637 F. Supp. 2d 224 (D. Del. 2009) (Farnan, J.), by recognizing that by refusing to resolve claim construction issues as a matter of law, it would be "inevitable that the parties would attempt to present this evidence at trial and thus argue claim construction to the jury. The Court cannot allow this." *Id.* at 230 (citing *O2 Micro*, 521 F.3d at 1361-63).

VI. ARGUMENT

Facebook's arguments regarding each of the disputed claim terms is provided in the sections below. Facebook has grouped terms and phrases into discrete sections, each section covering terms that relate to each other in a way that warrants parallel consideration. The groupings below are based on, for example, terms that describe a common mechanism in the

claims, terms that all derive from a single claim, or terms that share one or more common elements. Facebook has also indicated all of the claims that contain each term/phrase. Finally, Facebook has emphasized in bold the only terms that the Court will need to construe if Facebook’s set of representative claims is chosen and ordered.

A. “Application,” “Workspace,” “Web,” “Context,” “Environment”

Claim Term	Facebook’s Construction	LTI’s Construction
application (Claims 2, 4, 9, 12, 17, 20, 21, 22, 23, 26, 28, 30, 34)	a computer program designed to accomplish a specific task	<i>None offered</i>
workspace (Claims 2, 3, 21, 22, 23, 24, 25, 26, 28, 29, 30, 33, 34, 35)	a collection of data and application functionality related to a user-defined topic	<i>None offered</i>
web (Claim 3)	a collection of interrelated boards/workspaces	<i>None offered</i>
context (Claims 1, 4, 5, 6, 7, 8, 10, 23, 27)	a collection of interrelated webs	environment
environment (Claims 4, 9, 11, 12, 13, 14, 15, 16, 17)	collection of interrelated contexts	<i>None offered</i>

The terms “application,” “workspace,” “web,” “context” and “environment” appear in one or more of the independent claims of the ’761 patent. They collectively make up a group of interlocking terms that define the computing constructs in which a user creates data and to which the user can later move. The specification teaches that each of these terms are represented at different hierarchical “levels” within the architecture of the claimed system, with “application” at the lowest level and “environment” at the highest.

Figure 9 of the ’761 patent depicts a hierarchical “stack” showing how applications,

workspaces (which are synonymous with “boards”), webs and contexts interrelate:

↙ 900

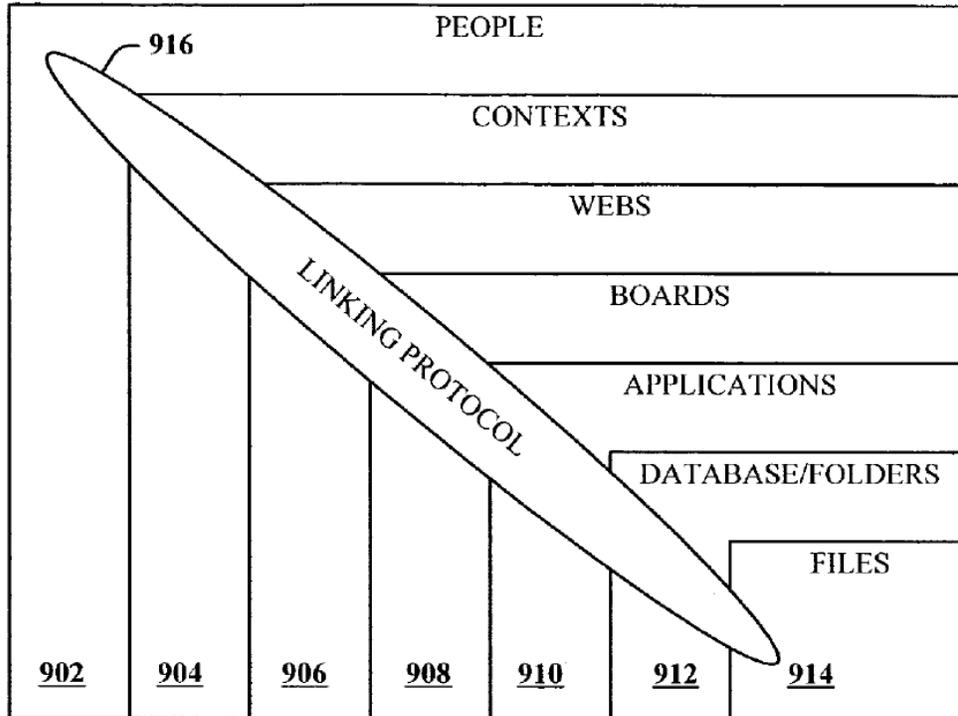


FIG. 9

Figure 9 is explained in the '761 specification as follows:

The structure starts at high level with the user at a user level **902**. The user level **902** is next associated with a context level **904** that defines all contexts in which the user can be included. Under the context level **904** is the web level **906** that associates one or more of the webs with one or more of the contexts of the context level **904**. A boards level **908** underlies the webs level **906** and provides associations of the many boards with one or more of the webs. An applications level **910** facilitates associating one or more applications with a board designated at board level **908**.

Col. 12:10-20. Facebook’s constructions of the five terms addressed in this section derive directly from the interrelationships and the hierarchical structure described in the specification.

As shown above, LTI’s approach to these terms amounts to simply ignoring all of them

except “context,” which LTI circularly defines as “environment,” a separate term for which it offers no construction whatsoever. As shown below, Facebook’s positions are the only positions consistent with the claims, specification and principles of claim differentiation. For ease of reference, Facebook will address these terms beginning at the lowest level of “application” and ending with the highest level of “environment.”

1. “Application”

The non-controversial term “application” is generally understood as a computer program designed to accomplish a specific task. *See, e.g.,* Microsoft Computer Dictionary 31 (5th ed. 2002) (Weinstein Decl. Ex. A) (“**application** *n.* A program designed to assist in the performance of a specific task, such as word processing, accounting, or inventory management.”) (emphasis in original). Facebook’s proposed construction of “application” will assist the jury in understanding how that term is used in the claims. Because LTI has proposed no alternative construction, Facebook’s construction should be adopted.

2. “Workspace”

Facebook’s definition of “workspace” captures the explicit definition of that term provided in the ’761 specification. The ’761 patent makes clear that the term “workspace” is a synonym for “board.” *See* Col. 3:32-34 (“This *workspace* is called a *board*, and is associated with a user context.”); Col. 3:41-43 (“Moreover, thereafter, the user can then move to shared *workspaces* (or *boards*), and access the same data or other data.”). The ’761 patent, acting as its own lexicographer, explicitly defines board as follows: “As used herein, a ‘board’ is defined as a collection of data and application functionality related to a user-defined topic.” Col. 7:49-51. This is exactly the construction that Facebook has proposed.

LTI’s argument that the specification only uses the term “board” to describe one type of workspace (“personal workspace”) is belied by the language quoted above, which shows that the

specification uses boards to describe both personal and shared workspaces. LTI's other argument is nonsensical since a topic is a collection of data. Because LTI has proposed no alternative construction, Facebook's construction should be adopted.

3. "Web"

As explained above, a "web" sits at a higher level than a workspace/board. The term "web" is also explicitly defined in claim 3. *See* Claim 3 ("the context component is associated with a *web*, which is a collection of interrelated workspaces . . ."). This definition is consistent with the definition in the specification, which uses the term "board" and "workspace" interchangeably. *See* Col. 7:58-59 ("As used herein, the term 'web' refers to a collection of interrelated boards."). Because the claims use the term "workspaces" in place of the term "board," the Court should construe "web" as "a collection of interrelated workspaces."

4. "Context"

The specification does not provide any explicit definition for the term "context," but its meaning is easily derived based on its relationship to the other terms to be construed. Sitting directly above "webs," the specification is clear that contexts are used to organize the interrelated webs that sit beneath them. *See* Fig. 9; col. 12:10-20 ("Under the context level **904** is the web level **906** that associates one or more of the webs with one or more of the contexts of the context level **904**"). The Court should therefore construe the term "context" to mean "a collection of interrelated webs."

LTI's assertion that the '761 patent uses the terms "context" and "environment" interchangeably is unsupported by the intrinsic evidence and is contrary to the doctrine of claim differentiation. The portion of the specification quoted by LTI does not use these terms interchangeably, but instead refers to them as two different computing constructs, both of which are distinct from a third construct, "workspace:" "The user automatically enters into a *user*

workspace **or** a *first context* 104 (also denoted CONTEXT.sub.1) **or** *environment.*” Col. 6:28-30 (emphasis added). The use of the term “or,” and the inventor’s assignment of “context” (but not “environment” or “workspace”) to a specific element of Figure 1 (104), confirms that the three terms are indeed used to identify distinct constructs.

Moreover, claim 1 refers to a first and second “context,” whereas claim 9 refers to a first and second “environment.” Had the inventors intended for “context” and “environment” to have the same meaning, they could have simply used one or the other in both claims 1 and 9. Instead, the inventors chose to reference a first and second “context” in claim 1 and a first and second “environment” in claim 9. Under the doctrine of claim differentiation, the inventors’ use of two different terms in these claims indicates that the terms should have different meanings. *See Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1370 (Fed. Cir. 2007).

5. “Environment”

The specification uses the term “environment” to refer to the highest level in which a user can operate: the “computing environment.” Col. 17:57 – Col. 18:2. That the “environment” is the highest level construct is reinforced by Figure 21, which provides an example computing “environment” (2100) in which the invention is carried out. This is also consistent with the plain meaning of “environment” found in well-known computing dictionaries. *See, e.g., Microsoft Computer Dictionary* 195 (5th ed. 2002) (Weinstein Decl. Ex. A) (“**environment** *n.* 1. The configuration of resources available to the user. *Environment* refers to the hardware and the operating system running on it.”) (emphasis in original). In the context of Figure 9 and the claims, the most logical construction of “environment” is “collection of interrelated contexts.”

Accordingly, each of Facebook’s proposed constructions relating to each of these five interlocking terms should be adopted.

B. “Metadata,” “Context Information,” “Change Information,” “Change in access of the user”

1. “Metadata”

Facebook’s Proposed Construction	LTI’s Proposed Construction
<p>A stored item of information associated with the user’s data that identifies at least the context, user workspace or user environment in which the user and the data currently reside (Claims 1, 8, 9, 17, 21, 22, 23, 24, 28, 29, 31 and 32)</p>	<p><i>None offered</i></p>

Facebook has proposed a definition of “metadata” that comports with the way in which it is used throughout the claims, specification and file history of the ’761 patent. LTI’s assertion that a computer scientist could assign a plain meaning to the term in a vacuum is neither helpful nor the proper exercise. *See Phillips*, 415 F.3d at 1321 (“Properly viewed, the ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent.”).

The ’761 patent is first and foremost about linking data to a user and keeping track of the user’s location within the system – be it a context, user workspace or user environment – and recording these facts as “metadata” that can be updated as the user moves from one location to another. *See*, ’761 patent, Background *supra*. The purpose of “metadata” is to store information related to the (a) user to whom the data is tied, and (b) the user’s location (since that is where the data will be). Every piece of intrinsic evidence confirms this.

First, the specification repeatedly states that “data created while the user is in the board is *immediately associated with the user, the current workspace*, any other desired workspace that the user designates, and the application. This association is captured in a form of *metadata*. . . .” Col. 9:50-54 (emphasis added); col. 3:44-50; *see also* col. 3:48-50; col. 9:54-56 (“[t]he *metadata* automatically captures the *context* in which the data was created as the data is being created.”)

(emphasis added); col. 4:1-4 (“when the user “moves from one context to at least one other context, the data created and applications used previously by the user *automatically follow the user to the next context.*”). Hence, the “metadata” is “stored information associated with the user’s data that identifies at least the context, user workspace or environment in which the data currently reside.”

The file history further supports Facebook’s proposed construction. During prosecution of the application that resulted in the ’761 patent, the examiner rejected the proposed claims as obvious over U.S. Published Appl. No. 2003/0217096 to Samuel J. McKelvie in view of U.S. Patent No. 6,421,678 to Brian Smiga. In attempting to distinguish their invention from the prior art, the Applicants argued:

In contrast, the subject invention is much more than a messaging architecture as taught in McKelvie and the natural language processing system of Smiga. The instant invention captures, dynamically, context information of a workspace and *stores that information in the form of metadata, which is further associated with data* (e.g., files, documents, ...). *The metadata allows the tracking and capture of user interactions through one or more workspaces.*

May 5, 2006 Amendments and Remarks at 15 (LTI 000610) (emphasis added) (Andre Decl. Ex. 4). The Applicants went on to describe an example of how the purported invention could be used in which a user enters a first workspace, moves to a second workspace, and the metadata correspondingly records where both the user and data currently reside:

When a user logs in to a system that employs the tool, the user enters into a personal or user workspace environment. . . *Context information associated with the workspace is automatically stored in the database as metadata, and the metadata is further associated with data that is created in the workspace.* Accordingly, any data created by the user in the workspace can be searched via the metadata.

Moreover, thereafter, the user can then move (or login) to a different workspace, such as a shared workspace (or shared board) that accommodates multiple users, for example, and the user can then access the same data created by the user in the

first workspace and/or new data that was created in the shared workspace. *The fact that the user is now in the shared workspace, and that s/he accessed the same data created in the personal (or first) workspace, is recorded as additional information stored in the metadata of the same data created in the personal workspace.*

* * *

Again, this *context* information of the single workspace and/or shared workspaces and *any movement of a user or users between the workspaces is automatically captured and stored in the metadata, and the metadata is further associated with data that is created in the workspaces.*

Id. at 15-16 (LTI 000610-11) (emphasis added). Thus, the file history also supports Facebook’s construction of “metadata.”

LTI’s only quibbles with Facebook’s proposed construction appear to be (a) that Facebook’s definition includes the phrase “an item” of information and (b) that metadata can include more than what Facebook has included in its definition. Both of these complaints are without merit. The use of “an item of” information is simply intended to assist the jury in understanding that each grouping of metadata is associated with a specific piece of user-defined data. As to LTI’s other concern, Facebook acknowledges that metadata could theoretically contain information beyond the identification of the context, user workspace or user environment in which the user and the data currently reside. The inclusion of the words “at least” in Facebook’s definition makes this abundantly clear. Facebook’s proposed construction simply captures the elements that the claims, specification, patent and file history acknowledge, over and over, *must* be recorded in the metadata—the identification of the location (*i.e.* context, user workspace or user environment) in which the user and the data currently reside.

Mr. Vigna’s conclusory declaration offers nothing to contradict Facebook’s construction. He states merely that there is a plain and ordinary meaning associated with the term “metadata.” As explained in Dr. Greenberg’s declaration, what constitutes “metadata” depends heavily on the system in which it is stored and utilized. *See* Greenberg Decl. ¶¶20-21. Each system uses

“metadata” for fundamentally different purposes. *Id.* As to the system disclosed in the ’761 patent, it uses metadata for recording where at least the data and user currently reside.

2. “Context information”

Facebook’s Proposed Construction	LTI’s Proposed Construction
Data that identifies at least a specific context (Claims 1, 4, 5, 6, 8, 10)	<i>None offered</i>

As discussed above, the purpose of the metadata is to store information related to the (1) user and (2) the user’s location. “Context information” is one type of information captured in the metadata, *i.e.*, data identifying a context, which is one level of location, at any given time.

The intrinsic evidence supports Facebook’s proposed construction. The specification explains that, “[t]he metadata automatically captures the *context in which the data was created* as the data is being created.” Col. 3:48-50 (emphasis added); col. 9:54-56. Furthermore, the specification states that, “[t]he system 100 also includes a context component 110 in association with the first context 104 to monitor and generate *context data 112 associated with data operations of the user in the first context 104.*” Col. 6:48-51 (emphasis added).

Contrary to LTI’s assertions, Facebook’s proposed construction is not at odds with dependent claim 4 of the ’761 patent. As a dependent claim, claim 4 is necessarily narrower than its associated independent claim, claim 1. Therefore, “context information” as used in claim 1 (the only independent claim in which it appears) must necessarily include information beyond what is required by dependent claim 4. Facebook’s use of the phrase “at least” in its proposed construction accounts for the fact that other information may be included. However, the specification is clear that the essential element of context information is an identification of a context. Dependent claim 4 may require “context information” to include additional pieces of data, but it cannot take away what it must include.

3. “Change information,” “change in access of the user” and “based on the change”

Claim Term	Facebook’s Construction	LTI’s Construction
change information (Claim 23)	data that records the movement of a user from one user workspace to another	<i>None offered</i>
change in access of the user (Claim 23)	movement of a user from the first workspace to the second workspace to facilitate access in the second workspace	<i>None offered</i>
based on the change (Claim 1)	In response to the user’s movement from the first context to the second context	<i>None offered</i>

The term “change information” and the related phrase “change in access of the user” are recited only in independent claim 23. “Based on the change” appears in claim 1. “Change information,” another type of information captured by the metadata recited in claims 1 and 23, is data that records a user’s movement between two workspaces in the claimed system. The tracking of “change information,” and its recordation in the metadata are either triggered by a “change in access of the user” or are “based on the change.” *See* claims 1, 23.

LTI concedes that change information is, as claim 23 states, “associated with a change in access of the user from the first user workspace to a second user workspace. . . .” LTI appears only to take issue with Facebook’s alleged “importation” of the concept of movement. The simple fact is that a user makes a “change in access” from one by workspace to another *by movement*. The specification acknowledges this: “[a]s a user . . . *moves* from one context to at least one other context, the data created and applications used previously by the user automatically follows the user to the next context. *The change in a user context is captured dynamically.*” Col. 4:1-5 (emphasis added). The file history similarly states:

the user can then *move* (or login) to a different workspace, such as a shared workspace (or shared board) that accommodates multiple users *The fact that the user is now in the shared workspace . . . is recorded as additional information stored in the metadata*

Again, this context information of the single workspace and/or shared workspaces and *any movement of a user or users between the workspaces is automatically captured and stored in the metadata*, and the metadata is further associated with data that is created in the workspaces.”

Andre Decl. Ex. 4 at 16 (LTI 000611) (emphasis added). The intrinsic evidence therefore makes clear that “change information” and “change in access of the user” are both associated with movement of a user from a first to a second user workspace, as Facebook has proposed.

C. “Dynamically”

Facebook’s Construction	LTI’s Construction
automatically and in response to the preceding event (Claims 1, 9, 17, 21, 22, 23)	<i>None offered</i>

The term “dynamically” is used multiple times in each independent claim of the ’761 patent at issue. LTI offers no construction of its own, but concedes in its opening brief that “dynamically” can be interpreted as “automatically.” D.I. 179 at 25. LTI’s point is helpful, but is only half correct. To understand what “dynamically” means, one must also understand its precondition, i.e. how the automatic action is triggered. As shown below, the term “dynamically” is used throughout the claims as an adjective to describe an action that occurs (a) automatically and (b) in response to the event that preceded it.

The specification uses the word “dynamically” in a way that makes clear that the word means more than just “automatically.” Nowhere in the claims or specification does the ’761 patent identify an action taking place “dynamically” without such action being in response to the preceding action by the user, such as the creation of data or the change of a user from one context, workspace or user environment to another. For example, the specification states that: “*As a user creates a context, or moves from one context to at least one other context, the data*

created and applications used previously by the user *automatically* follows the user to the next context. The change in user context is captured *dynamically*.” Col. 4:1-5 (emphasis added). “As users create and change their contexts, the data (e.g., files) and applications automatically follow, the shifts in context being captured *dynamically* in the context data.” Col. 7:46-49. In each case, the dynamically-captured change is triggered automatically by the preceding act, *i.e.*, the user having created a context or moved from one context to another.

Another example is found in the independent claims of the ’761 patent that require that the system “dynamically” associate metadata with the data created by the user in the first context, user environment or workspace. *See* ’761 patent, Claim 1 (“*dynamically* storing the context information in metadata associated with the user-defined data”); claims 9, 21 (“*dynamically* associating metadata with the data”); claim 17 (“data of a user environment is *dynamically* associated with the user environment in metadata”); claim 23 (“*dynamically* storing the context data as metadata”). The specification describes this dynamic association as follows: “Data created within the board *is immediately associated* with the user, the user’s permission level, the current workspace, any other desired workspace that the user designates, and the application. This association is captured in a form of metadata and tagged to the data being created. The metadata *automatically* captures the context in which the data was created *as the data is being created*.” Col. 3:44-48 (emphasis added). This is the essence of what it means for an event to occur “dynamically” within the ’761 patent – an event occurs automatically (*i.e.* capturing the context in which the data is created) in response to a preceding act (*i.e.*, the data being created by a user).

The file history also establishes conclusively that “dynamically” means more than just “automatically.” During prosecution of the application that resulted in the ’761 patent, the PTO

issued a Final Rejection against all claims. In response to several examiner interviews and with the consent of the Applicants, the examiner made substantial amendments to all independent claims. The claim that became claim 1 of the '761 patent, for example, was amended to strike out the word “automatically” from the second claim element and replace it with “dynamically.” See Notice of Allowability with Examiner’s Amendment, Andre Decl. Ex. 4 at 3 (LTI 000647) (“automatically updating the stored metadata based on the change,” changed to “dynamically”). Earlier in the prosecution, the applicants amended two other independent claims to replace the word “automatically” with “dynamically.” See Amendments to Claims, May 5, 2006, Andre Decl. Ex. 4 at claim 26 (LTI 000602) (changing “automatically associating metadata with the data” to “dynamically”), and claim 40 (LTI 000604) (same change). The result of these amendments was that each occurrence of “automatically” in each independent claim was replaced with “dynamically.” This confirms what the examiner and the applicants understood to be the case – that there is more to dynamically than just automatically. Facebook’s construction captures the meaning the examiner relied upon to allow the claims and thus should be adopted.

D. “Accesses [the data]” “Employs the data”

1. “Accesses [the data]”

Claim Term	Facebook’s Construction	LTI’s Construction
<u>accesses</u> [the data from the second context/user workspace] (Claims 1, 23)	retrieves information in the second context or user workspace as distinct from uploading, adding or creating it	<i>None offered</i>
[the data is] <u>accessed</u> [from the second user environment] (Claim 17)	the information is retrieved in the second user environment, as distinct from uploading, adding or creating it	<i>None offered</i>

Independent claims 1, 17 and 23 generally recite a system or method in which (a) a user

creates data in a first location (i.e. context, user environment or workspace); (b) the user moves to a second location; then (c) the user *accesses* the user-created data from the second location and; (d) the metadata is updated as a result of (b) or (c), depending on the claim. The key concept captured by Facebook’s construction is that in order for the user-created data to be “accessed” from a second location, it must already exist in that location.

Facebook’s construction is consistent with the plain meaning as understood to persons of ordinary skill in the art. *See* Greenberg Decl. ¶21. Data that does not exist, or that is not available to a user, cannot be “accessed” by the user. It must instead be created, added or uploaded. The act of “accessing” data necessarily excludes the acts of creating, adding or uploading. Indeed, claims 1, 17 and 23 recite the act of accessing “*the data*” from a second location, referring back to the same data in the claims that the user created in the first location.

This common sense understanding is fully supported by the intrinsic record. As explained in the Background section of this brief, a key concept disclosed in the ’761 patent is that data is tethered to a user (*i.e.* put into her “backpack”) such that the user is not required to manually upload or to add that data to multiple locations. *See supra* Section III. The tethered data instead automatically “follows” the user upon moving from one location (*i.e.* context, user environment, user workspace) to another: “As a user creates a context, or moves from one context to at least one other context, the data created and applications used previously by the user *automatically follows* the user to the next context. The change in user context is captured *dynamically.*” Col. 4:1-5 (emphasis added). The user’s data is thus available for access in a second location without the user having to manually create, add or upload the data in the second.

LTI claims that “accesses” and “accessed” as used in the claims of the ’761 patent should be given their plain and ordinary meaning, but does not identify what this ordinary meaning is.

The examples cited by LTI in an attempt to criticize Facebook’s construction, in fact, confirm that “access” excludes adding, uploading or creating data. The specification states, for example, that “[v]arying levels of access can be provided to the *uploaded* data.” Col. 11:30-31 (emphasis added). The data obviously cannot be accessed unless it was already uploaded. The specification also mentions the ability to “obtain access to any data in any form (e.g., documents and files) *created* by the applications,” col. 3:39-40, reaffirming that the data must have been created previously before it could be accessed. Therefore, the exclusion of uploading, adding or creating is supported by the intrinsic evidence, not “imported” by Facebook.

2. “Employs [the application and data]”

Claim Term	Facebook’s Construction	LTI’s Construction
employs [at least one of the application and the data from the second environment] (Claim 9)	uses at least one of the application and the data that is already in the second user environment, as distinct from uploading, adding or creating them	<i>None offered</i>
employs [the application and data from the second user workspace] (Claim 21)	uses the application and data that is already in the second user workspace, as distinct from uploading, adding or creating them	<i>None offered</i>

Claims 9 and 21 conclude with a requirement that the user “employs” an application and data from the second user environment or workspace, respectively. This is essentially a slight variation on the requirement that the user “access” the data from the second location as recited in claims 1 and 23 and discussed above. For the same reasons as discussed above in connection with “access” and “accessed,” the act of “employing” an application or data necessarily excludes the acts of creating, adding or uploading. Employs generally means “uses.” Thus, data or an application that does not exist, or that is not available to a user in a second location, cannot be

“employed” or used by the user from that location unless it already exists there.

E. “Context Component,” “Tracking Component,” “Storage Component”

1. “Component”

The term “component” does not appear by itself in the claims. Rather, it is always preceded by one of the three different that identify the type of “component” claimed in the patent (“context component,” “tracking component,” “storage component”). Construing “component” by itself would be unhelpful because each of the three “components” performs a fundamentally different function from the other two. Moreover, the specification explicitly defines the term “component” in such a broad and amorphous fashion as to render it almost entirely meaningless. *See* Discussion of “tracking component” below. Each of the three components recited in the claims should therefore be construed separately as shown below.

2. “Tracking Component”

The term “tracking component” appears in independent claims 1 and 23. The “functions” listed below come verbatim from the language of claims 1 and 23.

Facebook’s Construction	LTI’s Construction
<p>Means-plus-function element governed by 35 U.S.C. § 112, ¶ 6</p> <p>Functions (as to claim 1): Tracking a change of the user from the first context to a second context of the network-based system and dynamically updating the stored metadata based on the change.</p> <p>Functions (as to claim 23): Tracking change information associated with a change in access of the user from the first user workspace to a second user workspace, and dynamically storing the change information on the storage component as part of the metadata.</p> <p>Structure: Because the specification discloses no algorithm to carry out the recited function, claims 1 and 23 are invalid.</p> <p>(Claims 1, 23, 24)</p>	<p><i>None offered.</i></p>

A claim term may be a means-plus-function term under 35 U.S.C. § 112 ¶ 6 even though it does not include the word “means.” The lack of the word “means” raises a rebuttable presumption that § 112 ¶ 6 does not apply. *See Massachusetts Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software*, 462 F.3d 1344, 1353 (Fed. Cir. 2006). That presumption can be overcome, however, if it is demonstrated that “the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Id.* (internal quotes & citations omitted). The Federal Circuit has expressly held, for example, that generic terms such as “‘mechanism,’ ‘means,’ ‘element,’ and ‘device,’ typically do not connote sufficiently definite structure to avoid means-plus-function treatment.” *Welker Bearing Co. v. PHD, Inc.*, 550 F.3d 1090, 1096 (Fed. Cir. 2008) (alterations omitted).

The term “tracking component” easily overcomes any presumption against means-plus-function treatment. Outside the patent, the term “component” is a generic term that does not connote any definite structure to one of ordinary skill in the art. *See* Greenberg Decl. at ¶26. Reading the term together with the modifying term “tracking” provides no additional structural identification, either. *Id.* The patent specification makes the term even less definite by explicitly defining “component” as encompassing anything – or everything – in any computer system:

As used in this application, the terms “component” and “system” are intended to refer to a computer-related entity, either hardware, a combination of hardware and software, software, or software in execution. For example, a component may be, but is not limited to being, a process running on a processor, a processor, an object, an executable, a thread of execution, a program, and/or a computer. By way of illustration, both an application running on a server and the server can be a component. One or more components may reside within a process and/or thread of execution and a component may be localized on one computer and/or distributed between two or more computers.

Col. 5:54-65. The applicants, acting as their own lexicographer, adopted this breathtakingly broad definition of “component” that leaves one of ordinary skill in the art guessing as to the

infinite combinations of hardware, software, computers and other structures that may perform the function of the claimed “tracking component.” This is clearly the polar opposite of the “sufficiently definite structure” required to avoid means-plus-function treatment. *See Welker Bearing Co.*, 550 F.3d at 1096. Thus, there can be no doubt that “tracking component” is a means-plus-function element governed by 35 U.S.C. § 112 ¶ 6.

Once a claim term is determined to be a means-plus-function limitation, its construction is limited to covering the corresponding structures disclosed in the specification and equivalents thereof. *See* 35 U.S.C. § 112 ¶ 6. In *WMS Gaming v. International Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999), the Federal Circuit held that “[i]n a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm.” A failure by the specification to disclose such an algorithm renders the claim indefinite. *See Aristocrat Techs. Austral. Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1337-38 (Fed. Cir. 2008); *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1367 (Fed. Cir. 2008) (“Consequently, a means-plus-function claim element for which the only disclosed structure is a general purpose computer is invalid if the specification fails to disclose an algorithm for performing the claimed function.” (citation omitted)).

The specification discloses no algorithm for performing functions which the patent claims are performed by the “tracking component.” It does not, for example, disclose any algorithm for “tracking a change of the user from the first context to a second context” (claim 1) or for “tracking change information associated with a change in access of the user from the first user workspace to a second user workspace” (claim 23). Greenberg Decl. at ¶26. The specification devotes only a single sentence to the tracking component, which at best merely

restates these functions without disclosing any algorithm for carrying them out. *See* Col. 7:1-4. Claims 1 and 23, and all claims depending from them, are thus invalid as indefinite.

3. “Context Component”

The term “context component” likewise appears in independent claims 1 and 23. For the same reasons discussed above in connection with “tracking component,” the term “context component” is a means-plus-function element that must be limited to the algorithm disclosed in the specification for carrying out the recited functions. *See WMS Gaming*, 184 F.3d at 1349.

Facebook’s Construction	LTI’s Construction
<p>Means-plus-function element governed by 35 U.S.C. § 112, ¶ 6</p> <p>Functions (as to claim 1): Capturing context information associated with user-defined data created by user interaction of a user in a first context of the network-based system and dynamically storing the context information in metadata associated with the user-defined data.</p> <p>Functions (as to claim 23): Defining a first user workspace of the web-based server, assigning one or more applications to the first user workspace, capturing context data associated with user interaction of a user while in the first user workspace, and for dynamically storing the context data as metadata on a storage component of the web-based server.</p> <p>Structure: Because the specification discloses no algorithm to carry out the recited function, claims 1 and 23 are invalid.</p> <p>(Claims 1, 2, 3, 5, 23, 25, 28, 29, 35)</p>	<p><i>None offered</i></p>

Like the “tracking component” discussed above, the specification discloses no algorithm for performing the functions performed by the claimed “context component.” Greenberg Decl. at ¶26. It does not provide any algorithm for “capturing context information associated with user-defined data created by user interaction of a user in a first context of the network-based system.” The specification either says nothing about these functions, or simply restates them

without identifying any algorithm for carrying them out. *See* Col. 6:59-7:39. Claims 1 and 23, and all claims that depend from them, are thus invalid as indefinite under 35 U.S.C. § 112 ¶ 2.

4. “Storage Component”

Facebook’s Construction	LTI’s Construction
<p>Means-plus-function element governed by 35 U.S.C. § 112, ¶ 6</p> <p>Function: Storing user-created data and metadata (claims 1 and 9), storing “ordering information” (claim 17), and storing metadata (claim 23).</p> <p>Structure: Because the specification discloses no algorithm to carry out the recited function, claims 1, 17 and 23 are invalid. (Claims 1, 9, 17, 23)</p>	<p><i>None offered</i></p>

The term “storage component” appears in independent claims 1, 9, 17 and 23 to identify where certain information should be stored. LTI complains that Facebook’s proposed construction limits the term to a physical component of “memory,” whereas the specification defines a “component” as any combination of hardware, software and/or other structures. *See* Col. 5:54-65; *see also* discussion of “tracking component,” *supra*. The specification’s broad definition of “component” appears to support LTI’s position that “storage component” can include software, including an implementation entirely in software. Facebook therefore withdraws its construction of this term.

LTI’s arguments, however, confirm that the term “storage component” suffers from the same infirmities as do the terms “tracking component” and “context component,” both discussed above. In light the broad definition of “component” in the specification, the term “storage component” must likewise be construed as a means-plus-function element that must include the algorithm disclosed in the specification. *See WMS Gaming*, 184 F.3d at 1349.

The function performed by the “storage component” differs slightly based on the claim in which it appears. The “storage component” performs the functions of storing user-created data and metadata (claims 1 and 9), storing “ordering information” (claim 17), and storing metadata (claim 23). However, the specification discloses no algorithm for performing any of these functions. The specification refers briefly to a “data storage system” that includes “a number of storage methodologies . . . for handling and processing data,” col. 11:25-26 , but does not describe those methodologies in any detail. The specification merely identifies theoretical capabilities of these purported “methodologies,” without disclosing any algorithm by which they can be carried out. Col. 11:25-37; *see also* Greenberg Decl. ¶26. Because the specification fails to disclose an algorithm for performing the claimed function, claims 1, 9, 17 and 23 (and any claims that depend from them) are invalid as indefinite under 35 U.S.C. § 112 ¶ 2. *See Aristocrat Techs. Austl. Pty Ltd.*, 521 F.3d at 1337-38; *Net MoneyIN, Inc.*, 545 F.3d at 1367.

F. “Ordering,” “Ordering Information,” “Arrangements,” “Traversing” (Claim 17)

Claim Language	Facebook’s Construction	LTI’s Construction
ordering	placing into a fixed sequence	organizing
ordering information	data that specifies a particular order in which user environments must be traversed ²	<i>None offered</i>
arrangement	a specifically-ordered set of items	<i>None offered</i>
traversing	navigation by the user according to a specific path or route	searching

The terms “ordering,” “ordering information,” “arrangements” and “traversing” all

² Facebook has since refined its construction of “ordering information” to make it more consistent with the other three terms to be construed from claim 17. Facebook’s construction is the one reflected in the chart above, not the one appearing in LTI’s opening brief.

appear exclusively in independent claim 17 as follows (shown in bold underlining)

17. A computer-implemented method of managing data, comprising computer-executable acts of:
- generating a plurality of user environments in a web-based system;
- ordering** two or more of the plurality of user environments according to different **arrangements** of the user environments;

storing in a storage component **ordering information** related to the **ordering** of the two or more of the plurality of user environments; and

traversing the different **arrangements** of the user environments with one or more of the applications based on the **ordering information** to locate the data associated with the user environments.

As discussed above in Section III of this brief, claim 17 differs from other independent claims only insofar as the claimed method records and relies upon information *about the sequence* in which a user has accessed his data (*i.e.* the trail of breadcrumbs left by the movements). As shown above, the claim calls for the “ordering” of user environments according to “different arrangements,” and then allows “traversing the different arrangements . . . based on the ordering information.” Only Facebook’s constructions capture the notion of sequence and movement back along the same “path” to locate the document.

In everyday usage, as well as to one of ordinary skill in the art, “ordering” items occurs when those items are placed in a fixed sequence. *See* Greenberg Decl. at ¶22. Ordering items alphabetically, for example, would be understood as placing those items in an alphabetical sequence. If there was no fixed sequence, then the items could not be considered ordered.

LTI’s proposed construction of “ordering” as “organizing” is little more than an attempt to rewrite the claims and is at war with the plain and ordinary meaning of the term. LTI’s definition of “ordering” does not require that items be placed in any sequence. LTI’s

construction also makes no sense because something can be “organized” without being in order. For example, if someone places all of his blue socks in one pile and all white socks in another, the socks have been “organized” but nobody would assert that they were in order. *See* Greenberg Decl. at ¶22.

This common sense interpretation derives directly from the surrounding claim language. As shown above, claim 17 requires storage of “*ordering information*” relating to the ordering of “*arrangements*” of user environments, and concludes with “*traversing*” the arranged user environments “*based on the ordering information.*” This language clearly implies a relationship between environments that is based on placement into a fixed sequence, i.e. ordered so the user can track the exact path back to find the right information.

The '761 patent specification further supports this view. The only portion of the '761 specification that discusses the subject matter of claim 17 in any detail describes a “routing algorithm” (referred to in the patent as a “webslice”) that defines sequential arrangements in which user environments may be placed:

The disclosed system has associated therewith a routing algorithm, referred to herein as a “webslice.” A webslice is a relationship rule that defines a relationship between a web and one or more boards of that web. If the web changes (e.g., a board is added), and meets the criteria of the rule, the content will be on the new board as well. For example, the rule can include a web ID, a starting board ID, and “transversal” data (i.e., the relationship rule), in the following format:

webslice (target board)=<webID; starting board ID; transversal data>.

Thus, if a system includes two webs, W1 and W2, where web W1 includes five boards: A (the starting board), B, C, D, and E, with each subsequent board a child to the previous board (i.e., B is child of A, C is child of B, etc.), the webslice data “slicing” to board E will be similar to the following:

webslice (board E)=<W1; board A: A→B→C→D→E>.

* * *

Thus, by using at least three basis entities for the webslice (i.e., the web ID, the starting board ID, and the transversal data), the boards associated with a given content can be ascertained.

Col. 8:59-9:8; col. 9:30-34. This illustration shows how parent-child relationships establish the sequence of the various boards (i.e., $A \rightarrow B \rightarrow C \rightarrow D \rightarrow E$) via “ordering information” that defines the relationships between the boards (i.e. A is the parent of B, B is the parent of C, and so forth). Facebook’s constructions of “ordering,” “ordering information” and “arrangements” are consistent with this intrinsic evidence and should therefore be adopted.

The Court should also adopt Facebook’s construction of “traversing.” As shown above, claim 17 requires “*traversing* the different arrangements of the user environments with one or more of the applications *based on the ordering information*,” which indicates that “traversing” requires the environments to be navigated according to a specific path or route as defined by their ordering. In other words, to get from A to E, a user would pass through B, C then D. This is consistent with the plain meaning of “traversing” as understood in the computer science field. The *Microsoft Computer Dictionary* for example, defines “traverse” as “to access *in a particular order* all of the nodes of a tree or similar data structure.” Weinstein Decl. Ex. A (emphasis added). This is consistent with how one of ordinary skill in the art would understand “traversing.” See Greenberg Decl. at ¶23.

LTI’s construction improperly attempts to rewrite claim 17 by transforming “traversing” into “searching.” There is no basis for such a construction. Nothing in the specification or claims equates the act of traversing with searching. Moreover, other claims of the ’761 patent and other portions of the specification specifically discuss the act of searching as an art distinct from traversing. See ’761 patent, claim 6 (“*search* and association criteria set by the user”) (emphasis added), col. 3:50-53 (“Additionally, the data content is indexed to facilitate *searching*”).

for the content in number of different ways in the future by the user or other users.”) (emphasis added). Had the applicants of the ’761 patent intended “traversing” to be synonymous with “searching,” they certainly could have drafted claim 17 and the specification accordingly. However, when the applicants wanted to describe the act of searching, they used that word. And when they wanted to describe the act of navigating through a series of items according to a specific path based on their ordering, they used the word “traverse.” Accordingly, Facebook’s construction of “traverse” should be adopted.

G. Remaining Terms (File Storage Pointers, Association, Capturing, Create or Created, Generating, Indexing, Locating/Locate, Portable Wireless Device, Remote Location, Relational Storage Methodology, Relationship, Tagged, Updating)

The remaining terms for which Facebook seeks construction should not be controversial and, indeed, LTI could have stipulated to numerous of these “plain meaning” constructions. Instead, LTI has taken the position that each of these terms should be left with no construction, apparently based on their misconception that terms that can be readily understood by a lay jury and thus should not be subject to claim construction. This is wrong.

1. “Created/create” and “locating/locate”

Claim Language	Facebook’s Construction	LTI’s Construction
created/create (Claims 1, 7, 8, 9, 17, 21, 22, 23, 24, 29)	Brought/to bring into existence	<i>None offered</i>
locating/locate (Claims 3, 15, 17, 18, 19)	Finding/find	<i>None offered</i>

In its brief, LTI does not contest Facebook’s proposed construction of the terms “created/create” and “locating/locate.” Facebook’s constructions should therefore be adopted.

2. “Associated/Association/Associating”

Claim Language	Facebook’s Construction	LTI’s Construction
associated/association/associating (Claims 1, 2, 3, 5, 7, 9, 11, 12, 17, 18, 20, 21, 22, 23, 25, 26, 30, 32, 34))	Linked or linking	<i>None offered</i>

In the context of software, and read in light of the claims of this patent, “associated” is generally understood by one skilled in the art to mean “linked.” Weinstein Decl. Ex. A. That the term “link” is used in the specification in connection with a “communications link” is irrelevant simply because of the presence of modifier “communications.”

3. “Capturing”

Claim Language	Facebook’s Construction	LTI’s Construction
capturing (Claims 1, 5, 10, 23, 25, 28)	obtaining	<i>None offered</i>

“Capturing” is readily understood by one reasonably skilled in the art as “obtaining.” This is yet another example of a term that LTI has refused to construe because it is widely used in the field. However, such use may not be known to a lay person juror. For example, a juror may understand “capturing” to mean “to take prisoner.” Furthermore, the fact that the specification uses “obtaining” for user actions and “capturing” for computer system actions only supports the need for a construction here. Facebook’s construction is consistent with the definition provided by a dictionary used by one skilled in the art. Weinstein Decl. Ex. A.

4. “File Storage Pointers”

Claim Language	Facebook’s Construction	LTI’s Construction
file storage pointers (Claim 34)	information that identifies the specific folders in which specific files are located	<i>None offered</i>

LTI admits in its brief that “file storage pointers” is “not generally known to lay persons,” D.I. 179 at 27, but inexplicably offers no construction to assist the jury in understanding the meaning of this term. On this basis alone, Facebook’s proposed construction should be adopted. LTI’s rationale for rejecting Facebook’s proposed construction is non-sensical.

5. “Generating”

Claim Language	Facebook’s Construction	LTI’s Construction
generating (Claims 17, 35)	creating	<i>None offered</i>

“Generating” is yet another example of a term that is known by those of ordinary skill in the art but may not be known to lay jurors. The term “generating” is used only in claim 17 of the ’761 patent. *See* Claim 17 (“*generating* a plurality of user environments in a web-based system,” “providing a plurality of applications for *generating* and processing data in the user environments”) (emphasis added). One of reasonable skill in the art would clearly understand the term as synonymous with “creating;” LTI has offered no evidence that the term should have some any other meaning. The basis for LTI’s argument that “something can be generated without being created,” D.I. 179 at 28, is unclear in light of LTI’s failure to provide even a single example. Facebook’s proposed construction of this term should therefore be adopted.

6. “Many-To-Many Functionality”

Claim Language	Facebook’s Construction	LTI’s Construction
many-to-many functionality (Claim 32)	claim term is indefinite	Two or more users able to access two or more data files

The fundamental problem with “many-to-many functionality” is that there is no way for one of ordinary skill in the art to determine what the two “manys” refer to. LTI’s construction assumes that many-to-many refers to many users accessing many data files, but there is no support for this construction. Claim 32 is clear that the metadata facilitates the claimed “many-to-many functionality,” and there is nothing in the specification to suggest that the metadata has anything to do with whether multiple different users can access multiple data files. Claims 32 depends from independent claim 23, which requires only one user and mentions no data files.

LTI relies upon the specification's examples of “one-to-many” and “many-to-one” relationships, but those examples compound the ambiguity by suggesting the “one” and the “many” refer to the number of individual users sending and/or receiving communications, not a number of data files. D.I. 179 at 12 (quoting col. 2:36-44). The “many-to-many” could just as easily refer to many applications or many workspaces. One of ordinary skill in the art is simply left guessing. The Court should therefore declare this claim invalid.

7. “Portable Wireless Device”

Claim Language	Facebook’s Construction	LTI’s Construction
portable wireless device (Claim 16)	device that can communicate with a computer network over a wireless communications medium	<i>None offered</i>

LTI proposes no construction of this term and argues that Facebook’s proposed

construction is incorrect because it requires a wireless communication device to be able to communicate *with a computer network*. Claim 16, the only claim in which this term appears, clearly contemplates communication with a computer network when it recites “[t]he method of claim 9, further comprising accessing *the user environment* via a portable wireless device.” As discussed, *supra*, environments are computing environments. That telephonic networks are discussed in the specification and as applications in claim 30 is inapposite.

8. “Relational Storage Methodology”

Claim Language	Facebook’s Construction	LTI’s Construction
relational storage methodology (Claim 31)	storing items in a database based on their relationships to each other	<i>None offered</i>

This term appears only in claim 31. *See* claim 31 (“The system of claim 23, wherein the storage component stores the data and the metadata according to at least one of a relational and an object storage methodology.”). LTI’s assertion that this term does not appear in any claim is belied by the claim language itself – the claim clearly contemplates either a “relational storage methodology” or “an object storage methodology.”

This term, while understandable by one of ordinary skill in the art, is unlikely to be easily understood by a lay juror. LTI does not dispute Facebook’s proposed construction but instead would leave the jury with no construction for this rather technical term. This should not be allowed, and Facebook’s proposed construction should be adopted.

9. “Relationship Data”

Claim Language	Facebook’s Construction	LTI’s Construction
relationship data (Claim 25)	information defining a connection between two or more things	<i>None offered</i>

During the meet and confer process, Facebook proposed that the term “relationship” be construed on its own. Having considered LTI’s position in its brief, Facebook agrees that this term should be construed as part of the larger phrase “relationship data.” Facebook’s proposed construction will help the jury understand how this term is understood, and LTI has offered no alternative construction. Facebook’s proposed construction should therefore be adopted.

10. “Remote Location”

Claim Language	Facebook’s Construction	LTI’s Construction
remote location (Claim 15)	a place different from the web-based computing platform	<i>None offered</i>

This term appears only in dependent claim 15. *See* claim 15 (“The method of claim 9, further comprising locating the user environment from *a remote location* using a URL address.”) (emphasis added). LTI’s only dispute with Facebook’s construction is its mistaken belief that Facebook’s proposed construction imports a “physical location” limitation into the term. Facebook’s proposed construction does not contain any such limitation. Because LTI does not provide any alternate construction, Facebook’s proposed construction should be adopted.

11. “Tagged”

Claim Language	Facebook’s Construction	LTI’s Construction
tagged (Claim 8)	attached	<i>None offered</i>

The term “tagged” appears only in claim 8, which recites that context information is

“tagged to the user-defined data via the metadata when the user-defined data is created.” The word “tagged,” while understandable to one of ordinary skill in the art, will not be so easily understood by a lay juror. The Court should construe this term as simply “attached.” The specification consistently uses the term “tagged” in connection with the preposition “to” such that the clear meaning of the term can only be “attached.” *See* col. 3:44-50. LTI has failed to offer any alternative construction of this technical term, and therefore Facebook’s construction should be adopted.

12. “Updating”

Claim Language	Facebook’s Construction	LTI’s Construction
updating (Claims 1, 9)	modifying existing data to make current	<i>None offered</i>

Facebook’s proposed construction of “updating” is pulled directly from a dictionary used by those skilled in the art. Weinstein Decl. Ex. A (“To change a system or data file to make it more current.”). There is no support, either intrinsic or extrinsic, for LTI’s proposal that updating can be “creating.” Facebook’s proposed construction should therefore be adopted.

13. Remaining Terms

Facebook withdraws its request for construction of “user interaction,” “user defined data,” “indexing” “search and association criteria,” “interrelated,” “in response to which” and “interrelationship” at this time.

VII. CONCLUSION

Facebook respectfully requests that the Court adopt its proposed constructions.

Dated: December 23, 2009

BLANK ROME LLP

By: /s/ Steven L. Caponi

Steven L. Caponi (DE BAR #3484)
1201 Market Street, Suite 800
Wilmington, DE 19801
(302) 425-6400
FAX: (302) 425-6464

and

OF COUNSEL:
Heidi L. Keefe
Mark R. Weinstein
Jeffrey Norberg
Melissa H. Keyes
COOLEY GODWARD KRONISH LLP
3000 El Camino Real
5 Palo Alto Square, 4th Floor
Palo Alto, CA 94306

Attorneys for Defendant Facebook, Inc.