

Exhibit 1

REDACTED
IN ITS
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Exhibit 2

REDACTED
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Exhibit 3

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

PERSONALIZED USER MODEL, L.L.P.,
Plaintiff,
v.
GOOGLE, INC.,
Defendant.

: CIVIL ACTION
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: NO. 09-525-LPS

Wilmington, Delaware
Tuesday, January 11, 2011
Claim Construction Hearing

BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J.

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P R O C E E D I N G S

(REPORTER'S NOTE: The following claim
construction hearing was held in open court, beginning at
10:08 a.m.)

1 THE COURT: Good morning, everyone. Let's start
2 by putting your appearances on the record, please.

3 MS. JACOBS LOUDEN: Good morning, your Honor.

4 THE COURT: Good morning.

5 MS. JACOBS LOUDEN: For the plaintiffs, Karen
6 Jacobs Louden and Jeremy Tigan from Morris Nichols Arhst &
7 Tunnell; and I have with me here today Mark Nelson, Jennifer
8 Bennett and Marc Friedman from the firm of SNR Denton; and
9 we also have here with us today Yochai Konig who is one of
10 the inventors and a representative of the plaintiff
11 Personalized User Model.

12 Thank you, your Honor.

13 THE COURT: Thank you.

14 MR. HORWITZ: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. HORWITZ: Rich Horwitz from Potter Anderson
17 here today for Google; and with me from Quinn Emanuel are
18 David Perlson and Andrea Roberts at counsel table; and then
19 behind the table from Google, in-house counsel, Laura
20 Majerus and John LaBarre.

21 THE COURT: Well, welcome to all of you. So
22 we're here this morning for the Markman hearing. We
23 assigned both sides 90 minutes. Have you any suggestions
24 as to how we split that time up and actually proceed?
25 Mr. Nelson.

1 variables.

2 So my learning machine "am I interested in
3 sports" might be a 1. Yes, I am. Jennifer's might be a 0.
4 No, she is not.

5 Or if you take a non-binary, the degree of
6 interest in cars: Mine might be a .6. Jennifer is a car
7 buff. She might be a .9.

8 It's those values that are the parameters and
9 it's those values that make the user models specific to the
10 user or the learning machine specific to the user. That is
11 a big overall debate that runs through a lot of these
12 "learning machine" terms.

13 THE COURT: And under PUM's construction, if two
14 people have precisely the same variables and values, let's
15 just say for now, is that within the scope of the claims or
16 not within the scope? That is, if there happen to be two
17 that are completely identical, are they specific or are they
18 not specific?

19 MR. NELSON: They would still be specific to the
20 user. And, in fact, the specification, which I will get to
21 if I can get the right slide here, actually teaches that
22 exact embodiment. I'll have to get to it in the order, but
23 the specification talks about two instances where that
24 embodiment is actually taught. The first, when the user
25 models are initialized, a user can wear a hat or a prototype

1 user. Well, in that case, if they're both being initialized
2 we would have the exact same user model. So even though
3 there are two people that have the same one, it would be
4 specific to us because it's associated with us.

5 The specification also talks about at any
6 point in time, a user can choose a temporary profile or
7 a temporary hat. And it gives an example of a venture
8 capitalist in Silicon Valley buying a birthday present for
9 his teenage daughter; and, in that example, he chooses the
10 profile, and here it the actual text here on slide 60. He
11 chooses the profile of his or her teenage daughter at this
12 point.

13 Users can choose profiles on a temporary basis
14 for any session. So any number of users can choose from, in
15 this embodiment, a particular set of predetermined profiles,
16 and if more than one user chose those temporary profiles at
17 the same time, they would have the same user model. It
18 would still be specific to the user, but it wouldn't be
19 "unique to the user" as Google suggests.

20 THE COURT: Well, what would be a nonspecific
21 profile?

22 MR. NELSON: A nonspecific profile?

23 THE COURT: Right.

24 MR. NELSON: A nonspecific profile would be if
25 you had a situation like a group model, for example, where

1 you had -- or a clustering, as it's called, where you had a
2 whole group of users together for the purposes of
3 determining the interest in some particular topic. That
4 would be a nonspecific user model. And the patents talk
5 about that as a group model, for example, or a cluster
6 model.

7 Can you type in slide 17?

8 So let's talk about parameters real quick here.

9 We define it as values and weights, as I said.

10 Google defines it as variables. And then the phrase
11 estimating values or weights, we -- or estimating parameters,
12 we describe as estimating values or weights and Google
13 describes that as estimating a value or weight of each of
14 the variables, and then they have this "to calculate a
15 probability" language here on the bottom as well which is
16 disputed.

17 So slide 17 summarizes the disputes for this
18 area. And then I'll point out for the Court, too, we tried
19 to color the slide so we're talking about the parameters
20 term here in the broader "learning machine" terms and
21 phrases grouping.

22 And so why are the parameters, weights and
23 values? Well, first, because the claims mandate that they
24 be weights and values, that they're not the variables.

25 And why do I say that? Well, the claim language

1 So the "user-specific learning machine" is the
2 next term or phrase at issue. What is really at issue
3 there, we talked about what a learning machine actually is.
4 So the definitions here, their definition is it must be a
5 learning machine unique to the user. Ours is our same
6 definition of learning machine but it must be based on past
7 observations or experience specific to the user. And just
8 to adopt Google's shorthand version here, learning machine
9 specific to the user. So this is -- the debate here is the
10 unique versus specific, and we'll discuss this in connection
11 with the user model.

12 And so the definition of a user model -- and
13 this is on slide 53 -- is an implementation of a learning
14 machine updated in part from data specific to the user.
15 That comes out of the claim language.

16 Google's definition is a model unique to the
17 user, that is created and updated by the learning machine
18 and stored in a data structure.

19 So the three disputes: specific versus unique,
20 whether it's an implementation of a learning machine or
21 created and updated by a learning machine, and then whether
22 it's stored in a data structure.

23 We talked about the present invention stuff a
24 lot in the briefs so I'll skip over that.

25 The claim -- well, so we start with the claims.

1 Well, the claim language talks about specific. User
2 specific, user model specific. It doesn't say unique.
3 Nowhere in the claims is the word unique ever used. Strong
4 evidence that specific shouldn't be unique.

5 The specification repeatedly indicates that the
6 preferred embodiment Personal Web is associated with the
7 user, represents the user, but it doesn't ever say that it
8 is unique to the user:

9 Personal Web stores for each user a user model.

10 User model represents the user's information and
11 product interests.

12 Stores parameters that define the user.

13 Talks about individual user model for user u may
14 be applied to a cluster of users.

15 Again, there is nothing there that says it has
16 to be unique to the user. We talked about this at the
17 start, the hats. The specification with the hats teaches
18 specifically that two users can have the same user model at
19 any given point in time, whether on initialization, whether
20 they're wearing a temporary prototype or temporary profile
21 hat or, I suppose, if two people wanted to run the exact
22 same searches, from the same place, they might end up with
23 the same profile in such an extreme example. But the
24 specification clearly shows that these user models in this
25 context are not unique, meaning the one and only and unlike

1 anybody else all the time.

2 In fact, the specification uses unique only once
3 in the entire specification. And it uses it in this
4 context: The user model represents the user interest in a
5 document independent of any specific user information need.
6 This estimation is unique to each user. In strict
7 mathematical terms, given a user u and a document d , the
8 user model estimates the probability.

9 And so even the usage of unique here is talking
10 about, well, it's making a probability estimate for a user
11 model unique to a user model, not necessarily that it might
12 not be the same estimation if both people are wearing a
13 temporary hat, for example, or a temporary profile. That
14 is the only time the specification uses unique; and, in our
15 view, that does not mean that the user model itself must be
16 individualized and unique and unlike any other model as
17 opposed to associated with.

18 Now, in reality, in our patent most of the
19 models would probably be unique because the parameters which
20 define the user model and the user specific learning machine
21 would be likely quite different for each individual. They
22 just don't have to be.

23 And this is some general dictionary definitions:

24 Specific: having a fixed relationship to;
25 restricted by nature; explicitly set forth; definite;

1 relating to, characterizing, or distinguishing.

2 Right here is likely where Google is going to
3 rely on the unique language, special, distinctive or unique.
4 I don't think that means in the context of this general
5 dictionary that specific equals unique like they say in this
6 context.

7 Definition of specific: being the one and only.
8 I'm sorry. Definition of unique: Being the one and only.
9 2: being without a like or equal.

10 Again, reading the entire specification in the
11 claim language, we certainly believe that it's clear that
12 the unique language that Google is seeking is not the proper
13 construction here. The claim language uses the word
14 "specific" and that is how it should be construed.

15 And implementation of a learning machine versus
16 a learning machine or versus created by a learning machine.
17 This is a little piece of the animation from the tutorial.
18 What is intended to be represented here is this is the user
19 specific data files for this user AB15Z3DI-JS.

20 While the specification shows the learning
21 machine user model here, the user model specific to the user
22 comes in part from this, these user specific data files
23 which are up here. And so here we see the more complicated
24 function from the tutorial that is the user model here,
25 specific to the user because there is the parameters, these

1 values, and so when this things defines a user model, it's
2 not defined by the learning machine, it's obtained by, at
3 least in part, the user specific data files. And there you
4 see them kind of dumping into the funnel whatever the
5 calculations that are done to then update the parameters of
6 the user-specific learning machine or of the user model
7 specific to the user. New parameters, new values. New
8 values here, new parameters. And, again, that demonstrates
9 in our view that the updating -- the user model is not --
10 the updating is not being done by the learning machine which
11 is what Google suggests.

12 And the specification also teaches that the
13 user model, with its associated representations, is an
14 implementation of a learning machine. And the
15 specification -- I'll go through the next set of slides 67
16 through about 71. But you mentioned 72 earlier, and all the
17 text describing figure 2 and that embodiment talks about the
18 user model being the thing that estimates the probabilities,
19 and that is the learning machine in the claims.

20 First, it's initialized. Then it's updating the
21 parameters. That is what we just saw with the slide with
22 the funnel.

23 Finally, Personal Web 12 applies the user model,
24 to unseen documents, which are first analyzed in step 36, to
25 determine the user's interest in the document, based on step

1 14 minutes on your rebuttal.

2 MR. NELSON: Thank you.

3 MS. BENNETT: Thank you.

4 MR. HORWITZ: Your Honor, one thing I told
5 Mr. Perlson. I want to make sure it's still the case.
6 Since we are not going back and forth, since there is no
7 burden here, he will get a chance to get up again if he
8 reserves some time for response; is that correct?

9 THE COURT: That is correct. I was going to
10 point that out but thank you. You beat me to it.

11 (Binders passed forward.)

12 MR. PERLSON: Good morning, your Honor.

13 THE COURT: Good morning.

14 MR. PERLSON: Your Honor, I just wanted to run
15 right into the claims here because we already got some
16 background, and I know that both parties had submitted
17 tutorials.

18 The first claim term that I would like to
19 address is, user model specific to the user.

20 Generally, we'll be going in somewhat of a
21 similar order as plaintiff. I think that as we did in the
22 brief, rather than starting with the parameters, we've gone
23 right to the user model learning machine terms, and, in
24 particular, the first term, really the dispute we're going
25 to discuss, is what it means to be specific to the user.

1 And I think that really is one of the critical issues here.

2 So, well, first of all, as to user model
3 specific to the user, there are a few disputes. One is what
4 it means to be specific to the user.

5 Google says that it's the user model that is
6 specific to the user, and PUM seems to admit it is specific
7 to the user but provides a construction which actually
8 avoids that very result. And the same dispute is with
9 user-specific learning machine and user-specific data file.
10 And then there is also dispute of just what this user model
11 is.

12 So first in talking about what it means to be
13 specific to the user, we look obviously first to the claims.
14 Here, the whole claim is talking about this personalization
15 service that is provided to a user, the user. It's
16 throughout the claims. And then in 1-C, it says that you
17 are estimating parameters of a learning machine wherein the
18 parameters define a user model specific to the user.

19 And what is key is that each individual user has
20 their own user model. And this is really -- let me jump to
21 the spec first because I think it's useful. Repeatedly, it
22 says that there is a user model for each user. And it says
23 that in the present invention.

24 Plaintiff skipped over that point, but it is an
25 important point. And the recent Akamai case shows just how

1 important it is, the present invention language here. But
2 it's not just in the description of the present invention
3 that it says for each user, it says it again and again and
4 again.

5 And this really is the crux of the dispute.
6 What our construction provides is that each individual user
7 has their own user model. I have a user model. You have a
8 user model. Other people, they each have their own user
9 model.

10 And that is consistent with the common
11 definition of "specific." This is on slide 6, jumping back.

12 The definition that plaintiff provides or the
13 dictionary, they provide, says restricted by nature to a
14 particular individual. We have a definition that does use
15 the word unique but then also says, concerned particularly
16 with the subject specified, and also, intended for, applying
17 to, or acting to a particular thing. So it's about the
18 user. It's specific to the user.

19 And plaintiff, during the presentation, never
20 really directly disputed that point. It's not entirely clear
21 whether they conceptually disagree with that. Certainly,
22 their construction seems to suggest they do, but never once
23 during the presentation or in the briefs did plaintiff ever
24 really rebut this point that each user has their own user
25 model. In fact, many of the arguments that were made

1 suggest strongly that that is in fact the case.

2 Now, what they seem to be saying now, and I
3 don't think this was actually raised in their briefing so
4 we didn't address it, but they seem to be taking issue with
5 the word "unique" in the sense that they're saying that our
6 construction somehow provides that each of the user models
7 are identical to each other such that my user model would be
8 identified to your user model, or somebody else's user
9 model. That is not what we're saying. To the extent that
10 that is what the confusion is, that is not our intent here.

11 THE COURT: So that means -- and I know this
12 gets somewhat into variables and parameters -- but if we
13 are both being evaluated for our sports enthusiasm and
14 car enthusiasm, your constructions would allow for that
15 possibility. That is, just because you and I both have the
16 same parameters doesn't mean that your model is not specific
17 to you and my model specific to me.

18 MR. PERLSON: Right. Yes. Definitely. I mean
19 really the only thing we're trying to get at here is we have
20 a user model, you have a user model, and anyone else using
21 the system has a user model.

22 THE COURT: Okay. But then the term is "specific."
23 You want to change it, it looks like, to "unique" and it
24 seems to me the difference between specific and unique that
25 you are getting at is that there is something about your's

1 that no one else in the world can have; and if anyone else
2 in the world does have it, then we're not practicing the
3 claim under your construction.

4 MR. PERLSON: Sure. I understand the point that
5 you are raising, and that is not our intent. And the reason
6 why, frankly, is we think the claim language is pretty clear
7 on its own and throughout the spec that it's specific to the
8 user. That means that it is specific for that user and not
9 for any other user.

10 So another way to maybe put it would be that
11 it's a user model restricted to a particular user, using the
12 language of "specific." And the point is that we're not
13 sharing the same user model. I have a user model, and you
14 have a user model. Each individual user has to have their
15 own user model. Whether what is in the user model is the
16 same or not is not, is not what we're trying to get at.

17 THE COURT: Let me try it this way. Maybe you
18 will tell me it's irrelevant. But I live in a house and
19 there are other people that live in my house. I have a
20 specific address, but I don't have a unique address. As I
21 understand it, I don't live in a specific house under your
22 construction because I share the house with a number of
23 other people.

24 MR. PERLSON: Well, I guess the problem I'm
25 having with it is that the patent, in the context of the

1 patent, we're talking about a user, it's a one user, so the
2 analogy of the house or multiple people, I think that is
3 what I'm grappling with. If you were in your own apartment
4 and you are living by yourself, I suppose you had an
5 address and that apartment would be your apartment, and
6 then somebody else would live in a different apartment.
7 That is why I'm struggling with the analogy.

8 But the point we're trying to get at here is
9 it's each individual user has their own user model. If
10 there are 10 users, there are 10 user models. And that is
11 really the critical dispute about all of this.

12 Now, whether it's being said through "unique to
13 the user" as we've said it or "restricted to a particular
14 individual" or some construction that requires that to be
15 the case, that is really the critical issue. And I think
16 that, you know, I will explain why their construction
17 doesn't get at that.

18 Again, it's not entirely clear whether they
19 dispute this, but I think that their construction is
20 designed to avoid the result that each individual user has
21 their own user model. And, you know, they made comments
22 about what we're trying to do for purposes of noninfringement.
23 Well, the reason they're trying to do that is because they
24 don't want to be stuck with a situation where each individual
25 user has to have their own user model because they're

1 worried about how that affects their infringement case.

2 THE COURT: I'm pretty sure nobody is here out
3 of the goodness of their own hearts; right?

4 MR. PERLSON: Now, one of the points from the
5 specification that was raised was the, I guess the third
6 quote from the spec, which is actually identical to the
7 second. Well, actually, the third.

8 But they cited the first part of the sentence in
9 one of their slides, the user model represents the user
10 interest in a document independent of any specific user
11 information need, and omitted the second portion of it; and
12 then in other slides, they did address it and, it says this
13 estimation is unique to each user. And what that is saying
14 is that this user model represents, you know, your interest
15 in a document and that representation, that estimation is
16 unique to you.

17 THE COURT: Is that, in fact, the only place
18 where the word "unique" appears in the patent?

19 MR. PERLSON: I think that is probably right.
20 Yes.

21 Now, this is addressed in the brief, but I think
22 it is important that, you know, the use of this invention,
23 the present invention is used to describe the user model
24 as being for each individual user, and it's also the only
25 method described. Nowhere in the patent does it describe

1 where a user model specific to the user is shared with
2 multiple users. And I think the recent Akamai case just
3 further shows that that is critical in how you construe the
4 phrase.

5 And to be clear, we think that the "specific to"
6 language on its own shows that our construction is correct
7 and that this notion there has to be one user model for each
8 individual user is required by the claim language "specific
9 to." So it's not like we are trying to read something in
10 even but it certainly can't be broader than that.

11 THE COURT: What about they try to distinguish
12 Akamai from the specification language that says, you know,
13 the following preferred embodiment of the invention is set
14 forth without any loss or generality, something to that
15 effect. Was that present in Akamai? Is that a reasonable
16 distinction?

17 MR. PERLSON: Your Honor, I have a slide ready
18 for that, too.

19 THE COURT: All right.

20 MR. PERLSON: In fact, Akamai squarely rejects
21 that argument. And, in fact, we pointed this out your Honor
22 in our statement of supplemental authority and they just
23 ignored it, as they do here.

24 But Akamai said, this court also acknowledges
25 that much of a language describing a string indicating a

1 URL, the invention -- and that was the limitation that was
2 at issue that the Court eventually found was appropriately
3 included in the construction -- occurs within a entitled
4 detailed description of the preferred embodiment. And then
5 it notes that figure 4 is referred to as a preferred
6 embodiment. But it goes on to say that the specification as
7 a whole makes clear that including the object's original URL
8 is the only method to achieve the claimed association. Then
9 it goes on to say, indeed, it is the only method described.

10 And in the interest of time, I won't, you know,
11 go over this, but our slide 10 kind of talks through how
12 really this is the same issue where here, for each user,
13 having his own user model is the only one described. And
14 we would submit the construction that would be broader than
15 that would be inconsistent with even this very recent
16 Federal Circuit authority, in addition to Phillips and its
17 progeny.

18 We're not the only ones, your Honor, who agree
19 that each individual user has his own user model. Mr. Konig
20 testified, the inventor.

21 I took his deposition and I said: What is the
22 difference between a group model and a user model?

23 And he said: Well, group model represents the
24 combined interests of more than one user. And a user model
25 attempts to model the one particular user.

1 And this is exactly our point.

2 Now, the plaintiff says, oh, you should ignore
3 Mr. Konig. He doesn't know anything about the patent. He
4 hasn't read it in 10 years.

5 Well, first of all, he was deposed. He was
6 prepped for two days, and he is here representing the
7 plaintiff. He is an interested party. And, certainly, I
8 think it speaks volumes as to what is going on in the patent
9 and what is really claimed when the inventor and interested
10 party testifies in a manner consistent with how he said it.
11 And we cited a Federal Circuit case, Voice Tech, that says
12 it's appropriate to rely on.

13 THE COURT: That portion of the testimony you
14 are showing me, he doesn't say it's uniquely modeling the
15 particular user.

16 MR. PERLSON: Right. And, again, I don't want
17 to get --

18 THE COURT: I understand you are not wedded
19 necessarily to the word "unique" but you are wedded to the
20 concept of if anybody else shares the identical model, then
21 they're not practicing the claims of this patent.

22 MR. PERLSON: Well, let me say it this way. I'm
23 not sure that that is right. If, by coincidence, I have a
24 model that is identical to yours but it's created for both
25 of us, separately, then I think that that would be included.

1 I'm not saying -- we're not saying that that is out, but,
2 you know, as -- I mean, you know, as plaintiff conceded, as
3 a practical matter, that is unlikely to happen. But we're
4 not saying that if, by chance, two people have identical
5 models, that there would be no infringement, or that that
6 wouldn't meet that particular element.

7 What we're saying is those two people have to
8 have their own model. Whether, by coincidence, they somehow
9 have the exact same model is not going to take it out of the
10 claims.

11 THE COURT: You may have a slide on this, but
12 what about the initialization and the trying on a hat portion?

13 MR. PERLSON: I do have a slide on that.

14 This is slide 20, your Honor.

15 First of all, initialization is not the subject
16 of the independent claims. If you look at any there, it's
17 not a subject. In fact, it's dependent claim 28 talks about
18 initialization. So it's not even in the independent claims.

19 The independent claims talk about monitor the
20 user interactions and then you update the user-specific data
21 files. And then you estimate the parameters of the learning
22 machine, and then it talks about the user model is specific
23 to the user.

24 Now, if you look at even the language cited
25 in plaintiff's own brief, it says, the initialization is

1 performed without any user specific information in the
2 situations where there is a prototype user or a hat. This
3 is not a user model that is specific to the user. It's a
4 general user model that might be used by a user but the
5 language that they cite shows that it's not a user model
6 specific to the user.

7 And, in fact, later on, it goes on to say, when
8 they're talking about hats -- and this is at column 24, 19
9 to 21 -- it says when you are using a hat, your actions
10 don't affect your own user models. I'm sorry. That they
11 only affect your own user model, not the prototype user
12 model. So there is a distinction. This is completely
13 irrelevant to the user model specific to the user.

14 Now, in going back to plaintiff's construction
15 here, plaintiff admits in their briefs that the model needs
16 to be specific to the user. But if you look at their
17 construction, that is not what their construction says.
18 Their construction provides that there is data specific to
19 the user. And then, again, they kind of say something
20 similar in their language about "related to" here. They say
21 that -- this is slide 18 -- that PUM views that specific to
22 the user only requires the user model be associated with the
23 specific user or relating to the specific user. And they
24 justify this by saying that you just need to use data from
25 the user and then thereby it becomes related to the user.

1 But that is not what the patent is talking
2 about. First of all, there is no support for this notion of
3 related or specific to. I think that they, plaintiff
4 pointed to slide 59 in which they purported to provide
5 supports of why this associated with language would work.
6 And I think if you look at that slide, none of those quotes
7 that they provide use that language or anything like it.

8 But here is really what is going on here, your
9 Honor, is that -- and this is slide 16 -- is that the patent
10 talks about what is on the right. This is the critical
11 issue that I was referring to. That each user gets their
12 own user model.

13 Plaintiff is trying to get the result on the
14 left where you can have multiple users using a generic user
15 model, and when those users are using that user model, it's
16 specific to them. That is not what the patent describes,
17 and that really is the critical thing that is here.

18 And part of the reason -- another reason why
19 that can't be right is, in fact, when the patent talks about
20 a shared model, it is referring to a group model. And I
21 think that you had asked plaintiff's counsel about that
22 situation. That is what the situation is when there are
23 multiple users that are sharing a model. It is a group
24 model, and that is absolutely not a specific model. And
25 just because the group model might take some information,

1 you know, from the user on the left or the user on the right
2 and feed that into the group model, that doesn't make it
3 specific to them. It's specific to the group.

4 So the only way that you have a situation where
5 it's specific to the user is on the right here where each
6 user gets their own user model.

7 So going on to what this user model is, our
8 language provides that it is created and updated by the
9 learning machine. I don't think there is any dispute that
10 that is what it does. The specification, as we show here on
11 slide 21, is perfectly consistent with that.

12 PUM says the claims don't require it, but I
13 actually haven't seen any explanation why that is the case.
14 Instead, they say that there is a definition of the user
15 model.

16 Well, because there is a statement in the
17 specification that the user model with its associated
18 representation is an implementation of a learning machine.
19 Well, that language is all over the place. Is it a user
20 model that has an identity? Is it user model that has a
21 function? And that is not definitional.

22 What the user model is, is a data structure.
23 And there is no dispute that it is stored in a data
24 structure. And, again, here, Mr. Konig agreed that it's
25 stored in a data structure; and what plaintiff is really

1 trying to achieve here is really going back again to this
2 notion of the user model, the generic user model, they want
3 to say by using data that is specific to the user and
4 applying it to a generic user model that you implemented a
5 user model in a way that is specific to the user, even if
6 the user model itself is not specific to the user. That's
7 not what the patent claims, and the language of their
8 construction is specifically designed to allow them to later
9 argue that, and we would submit that that is completely
10 contrary to the claims and that construction should not be
11 allowed.

12 So the next dispute is user-specific learning
13 machine. Again, the dispute is here as far as what it means
14 to be user specific versus specific to the user, I don't
15 think there is much dispute that the issue here is the same.
16 And, again, you know, we cite to the same evidence here.

17 One thing I will -- and, again, getting back to
18 this point of plaintiff trying to say that merely by using
19 data of the user makes it, the user model specific to the
20 learning machine -- specific to the user. The same thing
21 really happens here with learning machine. They're saying
22 that it's the past observations and experiences that are
23 specific to the user, not the learning machine itself, and
24 so they're really trying to accomplish the same result
25 that we just went through as to user model through their

1 limiting.

2 Here, I think when you look at the entirety of
3 the specification in this case, it's clear that it's outside
4 of the Akamai situation.

5 THE COURT: When I look to the entirety of the
6 specification here, will I find any other model or even
7 another preferred embodiment described other than the one
8 that you have just highlighted?

9 MR. NELSON: Yes. Your Honor, you will find
10 several other models or preferred embodiments or more
11 preferred embodiments of different pieces of this. The
12 figure 2 of the patent describes essentially what is in the
13 '040, claim 1.

14 Other examples are figure 19 which generally
15 describes what is in claim 1 of '276. The patent talks
16 about initialization and gives several ways that is done.
17 It talks about updating and analyzing. I believe it gives
18 multiple sort of pieces of that.

19 So I'm not sure that you could call the figure 2
20 thing Personal Web the only embodiment. And there certainly
21 is a lot of teaching about what the user model is and how
22 it's initialized and stuff in the Personal Web embodiment.

23 And that sort of takes me to my second point
24 here is the difference again between the specific versus
25 unique language. And counsel had a slide up there. I

1 believe it was 16. I'm not quite sure.

2 That doesn't work.

3 So where they had a circle and they had user
4 model, and then a single model essentially that was our
5 construction, and then their construction was one person
6 referring to each model.

7 And what defendant's counsel sort of ignored
8 about all of that is the specific to the user language. And
9 this is all about the term parameters in PUM's view, and
10 although the defendant tried to make it seem like there
11 wasn't a big difference, in PUM's view, there is a huge
12 difference.

13 Defendant equates parameters and variables when
14 they talked about figure 4, but the result of defendant's
15 construction is if parameters are the actual, the words and
16 things like that, each user would have a separate model made
17 up of hundreds of thousands of words and all these other
18 things. That is not what our view is that the claims
19 contemplate. The claims contemplate that certainly that
20 could happen, but you could also have a model where you take
21 the function that I had up with the funnel slide, where you
22 track, you track six things.

23 That could be a model that is specific to one
24 user. It could also be a model that is specific to a
25 hundred users or a thousand users because the specificness

1 or the specificity -- I'm not sure if specificness is a
2 word -- but that comes from the parameters that define it,
3 and the claims don't talk about the generic model. They
4 talk about the model that is specific to the user and the
5 learning machine that is specific to the user, and that
6 language contemplates that you could have -- let's say you
7 have a hundred different variables. Each of those variables
8 are given a value. That value is their parameter. Those
9 values are different for each person. Therefore, the model
10 is specific to that person.

11 That is really the heart of the dispute. And
12 it's all about the parameters term.

13 THE COURT: But if those numbers, the parameters
14 were coincidentally the same for two people, in your view, is
15 the model still specific to the user?

16 MR. NELSON: Yes, absolutely. The model is
17 still specific to the user because it's defined by the user.
18 And the user-specific learning machine is specific to the
19 user.

20 THE COURT: And I heard Mr. Perlson agree with
21 that and also agree they're not trying to preclude you from
22 having the same variables. You know, we all like sports, we
23 all like cars. They're not trying to require you to have
24 different variables for each user. So I'm left wondering
25 where the dispute is here.

1 MR. NELSON: Well, I don't think that counsel
2 agrees with that statement. Counsel views the parameters as
3 the variables and the specificness is a group of variables
4 -- How much are you interested in sports? Do you like cars?
5 -- all of those things as the parameters, and that is what
6 makes it specific.

7 And under that interpretation, you would have a
8 model that has variable 1 to 100 for one user, variable 1
9 through 200 for the next one, variable 1,000 through 1,050
10 for the next one. That would all be different.

11 In our view, that is a different situation where
12 you had a situation where you had a model that had 100
13 generic (a) (b) plus (a) (b) (c) (d) (e) times (x). That is
14 a function. That is a template for a function. Learning
15 machine.

16 When that model is made specific to a user by
17 being instantiated with the user's parameters that is
18 tracked in the user specific -- comes from the user-specific
19 data files -- there we go -- and is tracked by the system.
20 That, I think that is the difference. I don't think they
21 would agree that a model that was a single model that had
22 differing parameters being variables for different people
23 necessarily would or would not be within the claims.

24 THE COURT: You agree that probability has to be
25 a number; correct?

1 are three limitations and the deterministic relationship.

2 Let's go to slide 204, please.

3 And so there has been a lot of talk about what
4 the user model was here, and that it had to be specific to a
5 user. Mr. Konig was asked a whole variety of hypotheticals
6 about what if you had two users typing every other word on a
7 computer or something like that, and it didn't go away? And
8 they didn't step away from the computer. Is that one user
9 or two? Or if you have -- I think another one was where
10 they had six people and there are three computers and two of
11 them are using each computer. Is that, would that be a user
12 model specific to the user or not?

13 And that context, it goes back a little bit to
14 the dispute as to what a user is as well. But in the next
15 set of slides, 204 through 210 here, what he ultimately says
16 is the system isn't perfect, but you can have a situation
17 where you have a user model specific to a user based on the
18 user being a person or representative tag or identifier
19 where you have, the most extreme example might be two people
20 typing every other letter of a search query or something,
21 and if that is how that group choose to use the computer,
22 the model that is created based on the tag or identifier
23 using the parameters that were specific to that two-headed
24 person typing would still be a model specific to the user.

25 And Mr. Konig was clear on that. The entirety

1 of that testimony is here in slides 209 to 210.

2 I think this is the conclusion.

3 "So it would be different than if the computer
4 didn't know anything about them, but it will be the impact
5 of both of their action will affect the personalization."

6 "So in the theoretical sense that for whatever
7 reason, they're doing random stuff that the computer cannot
8 differentiate, if each one of them is typing one character
9 and going away or something, then the position would be to
10 the position of them as a group."

11 Counsel made a point about the hats argument we
12 made, and that it wasn't applicable. Well, the hats are
13 applicable to initializing the user model, so the
14 initializing the user model, they are the user model for
15 that point in time. And so they definitely are applicable
16 the argument that plaintiff is making here.

17 Let's go -- I don't remember the slide but the
18 defendant had a slide up that said "program," and then it
19 was their software implementation argument, and it was an
20 extrinsic evidence cite. And what that cite, what the
21 entirety of that text says, it said learning machine/program,
22 usually represented in software. It didn't say it had to
23 be. It said usually represented in software.

24 And we're not saying that it couldn't be one,
25 but our model and function language that comes from the

1 specification, and, as counsel pointed out, is used
2 throughout the specification, is much more clear as to what
3 a user model -- what a learning machine actually is.

4 Counsel gave an example also on user-specific
5 data files in the comprising language. That I think the
6 example was something if you had a pizza comprising
7 pepperonis and sausages or whatever it was.

8 Well, that is using comprising up here in the
9 preamble sense. That is not what the case, what the
10 Haemonetics case that we cited teaches and that is not what
11 the situation is here.

12 Taking counsel's example a little further.
13 Suppose you had a claim that says baking a pizza comprising:
14 forming a dough base, adding a sauce base, and adding a
15 topping base, comprising pepperonis and mushrooms.

16 I think in that sense, the pepperonis and
17 mushrooms are defined by the claims, and that is the
18 argument we're making here, and that is where their example
19 breaks down.

20 I don't know if I'm out of time yet or not.

21 THE COURT: You have got about two more minutes,
22 and I'm going to have two questions for you. But I'll give
23 you the minute and-a-half, and then I'll ask the questions.

24 MR. NELSON: Can I have slide 215?

25 And so the "files" term and whether or not

1 never did rebut is there is no disclosure of a method where
2 there is a user model that is not for each user. And that
3 is really the point. And that is why this is the same as
4 Akamai. In that case, there was no other -- there is no
5 disclosure of. There was an alphanumeric string that didn't
6 include the object's original URL. Here, it's user model
7 and each user has to have their own user model, and there is
8 no disclosure of anything else in the spec. And I really
9 don't think that that is disputed.

10 Whether or not there might be some aspects of
11 the Personal Web embodiment that aren't claimed is a
12 separate issue. I mean it's not every single, every single
13 word that the person -- or what is described as a Personal
14 Web might not be claimed, but that is an entirely separate
15 issue as to whether the only thing that is described in the
16 spec is that each model -- that each user has their own
17 model.

18 And I wanted to talk about that a little bit
19 because I think it's still really critical to make clear
20 what the distinction is between our position and their
21 position. And it seems to me that plaintiff explicitly said
22 that in slide 16, that one on the left is what they allow.
23 That each user does not need to have their own user model.

24 And that, again, they never pointed to anything
25 in the spec that would support that. And they just seemed

1 to not want to have their patent limited to that. But that
2 is not what it says. The user model is specific to the
3 user.

4 And they keep on harping on the parameters. And
5 while, you know, I think it's probably true that by virtue
6 of the fact of the parameters, the user model being specific
7 to the user, that the user model would have parameters and
8 those parameters would, you know, show the user's interest
9 in something or a topic, but it's the user model itself that
10 has to be specific to the user, and that is what the claims
11 say. And that is the term at issue. Is the user model
12 itself specific to the user? Is the learning machine
13 specific to the user?

14 Now, I came up with this little drawing here to
15 show what I think plaintiff is saying.

16 They had said that the user model can have a
17 hundred users or a thousand users and that parameters from
18 each of those users can make up the user model and it can
19 still be specific to all of them. Your Honor, that is the
20 group model that we have, on slide 17 we show that, and that
21 is not a user model.

22 This is what they're saying a user model
23 specific to the user is. They're saying if you have user
24 (a) (b) and (c) and there is parameters as to each of them,
25 and as long as you are using a parameter for (a) and a

1 parameter for (b) and a parameter for (c) that the user
2 model is specific to each of them.

3 But that doesn't make any sense and that is not
4 what the patent describes. The patent describes (a) gets
5 its own user model, (b) gets its own user model and (c) gets
6 a user model. The group user model does not become specific
7 to the user merely because it's using data from that user,
8 and that really is the heart of the dispute here. And we
9 would submit that the plain language of the claims and the
10 spec are entirely consistent and really allow for no other
11 interpretation.

12 There was some discussion of probability, and
13 plaintiff conceded that probability needs to be a number,
14 and there is no limitation. They explain how their
15 construction accounts for that. I mean they never explained
16 why the examples that we provided in the slide about how the
17 user may be interested and is probably interested, our
18 beliefs or likelihood. Those fit within their construction,
19 and that is not what our construction provides. We submit
20 ours is the one that is consistent with the spec. It needs
21 to be a number and the number is a percent of the chance,
22 and nothing has been provided to the contrary.

23 They seek to rebut the pizza example. That
24 example is not as they said, talking about the preamble of
25 the claim. We used almost identical language to the claim

1 but I would like to see what you come up with, focusing on
2 that so that I maximize the chance of being helpful to you.

3 Anything further, Mr. Nelson?

4 MR. NELSON: No, your Honor.

5 THE COURT: No. And Mr. Perlson, anything?

6 MR. PERLSON: Nothing further, your Honor.

7 THE COURT: Okay. Thank you all very much.

8 We'll be in recess.

9 (Claim construction hearing ends at 1:35 p.m.)

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