

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

XEROX CORPORATION,)
)
Plaintiff,) C.A. No. 10-136-LPS
)
v.) **JURY TRIAL DEMANDED**
)
GOOGLE INC., YAHOO! INC., RIGHT) **PUBLIC VERSION**
MEDIA INC., RIGHT MEDIA LLC,)
YOUTUBE, INC. and YOUTUBE, LLC,)
)
Defendants.)

DEFENDANTS' OPENING BRIEF ON CLAIM CONSTRUCTION

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NOTE ON CITATIONS

1. U.S. Patent. No. 6,778,979 (the "979 patent") is attached as Exhibit A.
References to the patent-in-suit are indicated by column and line number, or by claim number. A reference to "3:15" therefore means column 3, line 15 of the patent.
2. The April 23, 2004 Appeal Brief from the prosecution history of the '979 Patent is attached as Exhibit B.
3. A printout of www.dmoz.org from www.archive.org for December 18, 2000 is attached as Exhibit C.

Introduction

The asserted claims concern a method for generating a search query from document content, and, in particular, a method for formulating the query to restrict a search at an information retrieval system to a specific category of documents within that system. The patent teaches that searching only within the specified category, as the claims require, will improve the precision of an information retrieval system. Indeed, to secure issuance of the patent during prosecution, Xerox distinguished its invention from the prior art based on this claimed restriction of the scope of a search. Yet, Xerox now seeks to eliminate this very requirement from the asserted claims, and does so transparently in service of infringement theories directed to accused systems that do not restrict searches to categories. Xerox also seeks constructions permitting the formulated query of the claims to include "one or more [assigned] classification labels," even though the plain language of the asserted claims requires that the search be restricted to a single category "identified" by the assigned classification label corresponding to that category. Xerox should not be entitled to walk away from the plain meaning of the patent claims and Xerox's representations to the PTO. Xerox's other proposed constructions similarly depart from the intrinsic evidence and are contrary to applicable precedent. Accordingly, Defendants' constructions should be adopted and Xerox's constructions rejected.

Factual Background

I. OVERVIEW OF THE ASSERTED PATENT.

Xerox alleges infringement of the '979 patent, entitled "System for Automatically Generating Queries." (Ex. A hereto.) The specification of the '979 patent was the basis for several patents concerning "enriching documents" according to various disclosed methods. The claims in the patent-in-suit concern a method for automatically generating a search query based on selected

document content and restricting the search from that query to a specific category in an information retrieval system.

For example, claim 1 of the '979 patent recites:

A method for automatically generating a query from selected document content, comprising:¹

- [a] defining an organized classification of document content with each class in the organized classification of document content having associated therewith a classification label; each classification label corresponding to a category of information in an information retrieval system;
- [b] automatically identifying a set of entities in the selected document content for searching additional information related thereto using the information retrieval system;
- [c] automatically categorizing the selected document content using the organized classification of document content for assigning the selected document content a classification label from the organized classification of content; and
- [d] automatically formulating the query to restrict a search at the information retrieval system for information concerning the set of entities to the category of information in the information retrieval system identified by the assigned classification label.

Claim 18, the other asserted independent claim, recites the same steps as Claim 1, but recites they are done through an "article of manufacture."

Plaintiff also asserts dependent claims 2, 3, 5, 10 and 19. These dependent claims recite further steps such as limiting the query by adding terms relating to context information (2, 3, 19) and having a characteristic vocabulary associated with classification of document content (10).

II. THE SPECIFICATION DESCRIBES FORMULATING A QUERY TO RESTRICT A SEARCH TO IMPROVE PRECISION OF SEARCHING.

The '979 patent addresses one of the many methods for document "enrichment" disclosed in the specification, in particular "[t]he manner in which to automatically formulate queries given an identified entity and its associated document content." (48:34-36.) The patent states "this technique

¹ The '979 Patent does not identify the elements by letter. For ease of reference, the steps are referred to herein as letters (i.e., step (a), step (b), step (c) . . .), with step (a) corresponding to

for automatically formulating a query aims to improve the quality (e.g., in terms of precision recall) of information retrieval systems." (48:37-39.) The specification provides that a "classification profile is derived that allows document content to be assigned to an existing label or to an existing class, by measuring the similarity between the new document and the known class profiles." (49:26-30.) Using the classification label, the invention formulates a query to restrict a search at the information retrieval system to the category identified by the classification label. (50:1-11; 59:56-65.)

Figure 39 (reproduced below with annotation) illustrates the invention's use of an assigned classification label to restrict a search to a corresponding category of documents within an information retrieval system. In the example given in the patent, because "the entities 'seven' and 'up'" relate "most appropriately to the class of documents found in the directory science>biology>genetics," the "search is focused on documents found in the single node of the document hierarchy genetics, at 3910" (50:10-11):

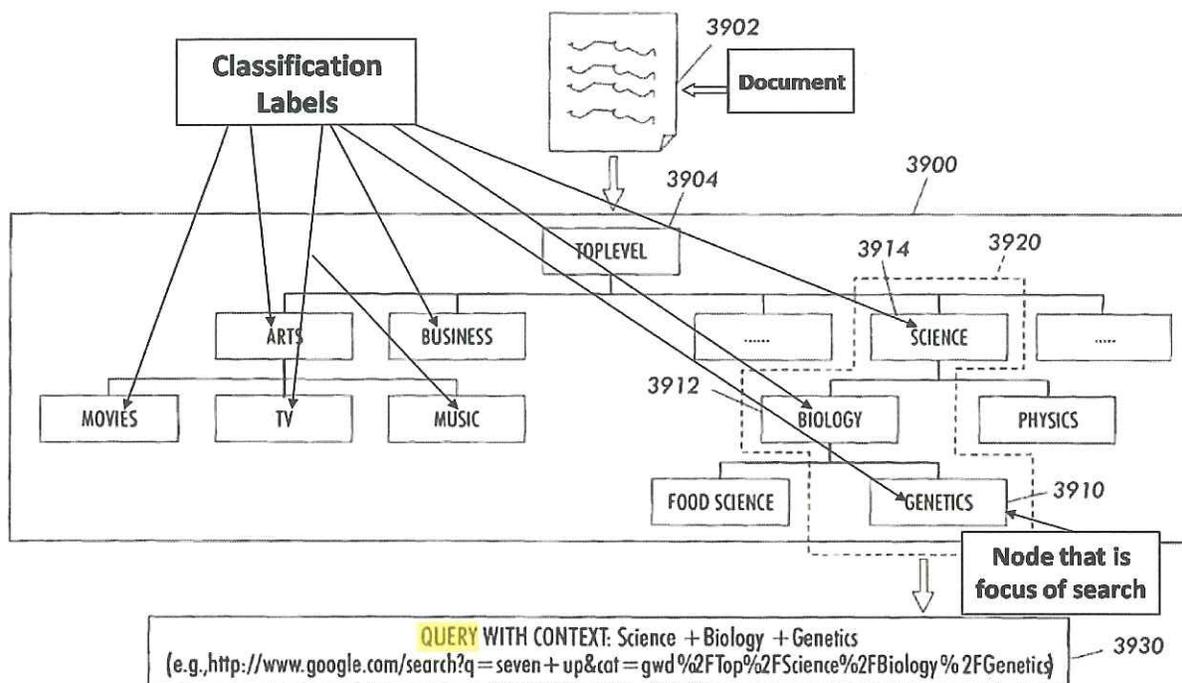


FIG. 39

the first paragraph of the claim, step (b) corresponding to the second paragraph, and so on.

As part of this restricted search, the remaining nodes – e.g., Movies, TV, Music, Business, Food Science, and Physics – are not searched, thereby providing the added "precision" to the search the specification asserts is a benefit of the invention. (50:9-11.)

The specification discloses additional ways to improve search quality which are addressed in asserted dependent claims. For example, textual content near the identified entity may be added to the query. (50:18-32; 50:62-67; 51:64-52:6.) Another approach is to add to the query "category vocabulary," which "consists of words that describe the identified category." (51:35-37; 52:7-14.)

III. XEROX DISTINGUISHED THE PRIOR ART BASED ON THE RESTRICTION OF A SEARCH TO THE CATEGORY.

The claims of the '979 patent were repeatedly rejected during prosecution. It was only after Xerox appealed the examiner's final rejection and repeatedly pointed to and emphasized the "restrict a search. . . to the category" limitation that Xerox was able to obtain allowance. For example, Xerox argued that the claims were patentable over U.S. Patent No. 6,154,213 ("Rennison") because:

Unlike either action described in Rennison (a) using user queries to define document making up an information space or (b) defining queries by user movement in the information space, Appellant's claimed invention concerns the automatic formulation of a query in which the automatically formulated query is *restricted* to Information concerning a set of entities identified in document content and a category of information in an information retrieval system identified by a classification label assigned by categorizing the document content.

(Ex. B at 7 (highlighting added).) Xerox also noted that its patent does not "expand" a query, but "*restricts*" the search to a particular category:

Moreover, Appellant does not dynamically generate an information space in response by expanding terms of a user query using a knowledge base as taught by Rennison, instead Appellant's claimed invention recited in independent claim 1 concerns the automatic formulation of a query from selected document content by, in part, (a) categorizing the selected document content, and (b) formulating a query to restrict a search to a category of information at an information retrieval system.

(*Id.* (highlighting added).) In seeking to distinguish Rennison, Xerox also stated that additional terms surrounding the set of entities are used to "further limit" and "further constrain" a query whose application is already restricted to a category of information in an information retrieval system:

In contrast, the purpose Appellant identifies additional terms surrounding the set of entities identified in selected document content is to further limit the query automatically formulated which is restricted to a category of information in an information retrieval system identified by an assigned classification label. That is, while Rennison identifies additional terms to improve (i.e., expands the possible) mappings between concepts extracted from a document and concepts in a knowledge base, Appellant further constrains the formulation of a query to be applied to a category of information in an information retrieval system.

(*Id.* at 9-10 (highlighting added).)

IV. ALL CLAIMS OF THE '979 PATENT HAVE BEEN REJECTED IN REEXAMINATION.

On March 7, 2011, in the pending reexamination of the '979 patent, the Patent Office rejected every claim in of the '979 patent, on every ground raised by third party petitioner Google. Xerox's response to the Office Action is due by May 7, 2011.

V. THE ACCUSED TECHNOLOGY

A. Google

Xerox accuses Google's AdSense for Content of infringing the patent-in-suit. AdSense for Content is a service that provides advertisements for display on websites of third party publishers across the Google Content Network.

[REDACTED]

B. Yahoo!

Xerox also accuses three Yahoo! products: Content Match, Contextual Shortcuts, and Right Media Exchange. Content Match and Contextual Shortcuts have been generally discontinued in North America. Content Match was an advertising service that placed textual advertisements into a web page in response to an ad call. Contextual Shortcuts analyzed a web page visited by a user to select terms within the page which would be used as search terms if the user clicked or hovered over them. Finally, Right Media Exchange is a service that enables advertisers to bid on advertising space made available by website publishers.

All of the accused systems are fundamentally different from the claimed invention of the patents. For example, none of the accused systems formulate queries to restrict a search to a

category of information. In an attempt to ensnare these systems, however, Xerox seeks to improperly construe this and other limitations to eliminate that requirement from the claims.

Argument

I. "TO RESTRICT A SEARCH . . . TO THE CATEGORY OF INFORMATION . . . IDENTIFIED BY THE ASSIGNED CLASSIFICATION LABEL." (1: (D); 18: (F))

<i>Term</i>	<i>Defendants' Construction</i>	<i>Xerox's Construction</i>
to restrict a search at the information retrieval system for information concerning the set of entities to the category of information in the information retrieval system identified by the assigned classification label	to confine a search at the information retrieval system to the category of information identified by the assigned classification label, where the search seeks information concerning the set of entities.	the set of data specifying search criteria includes data items corresponding to one or more entities identified in the "automatically identifying" step and one or more classification labels assigned in the "automatically categorizing" step.

The key dispute is whether the phrase "restrict a search . . . to the category..." means what it says, that the search is restricted – i.e., confined – to the category of information identified by the assigned classification label, as Defendants propose, or whether the search need not be restricted to any category, as Xerox's construction allows.

A. The Intrinsic Evidence Supports Defendants' Construction.

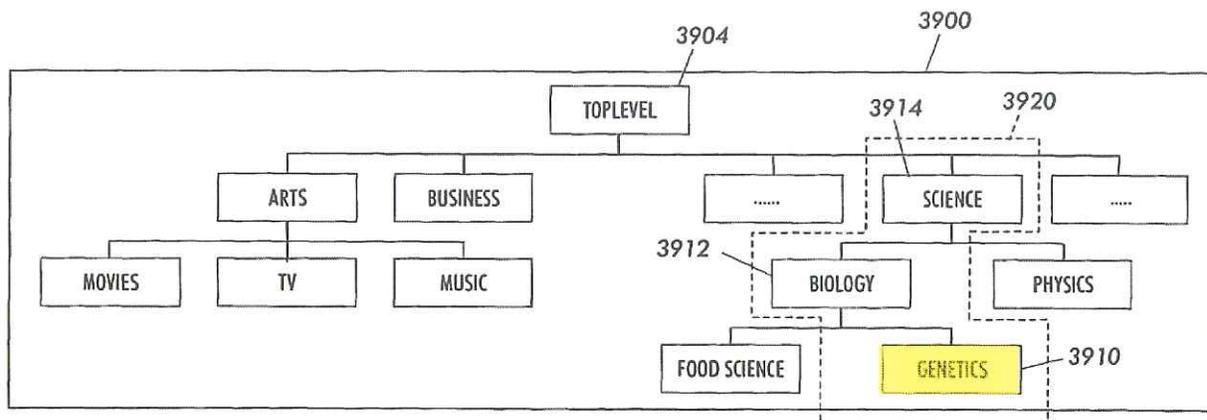
The proper starting point for claim construction is the claim itself. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). Both asserted independent claims contain the following limitation that explicitly requires that a search must be restricted to the category of information identified by the classification label:

automatically formulating the query to restrict a search at the information retrieval system for information concerning the set of entities to the category of information in the information retrieval system identified by the assigned classification label.

Defendants' construction uses the plain language meaning of "to restrict" in this context as "to confine [within bounds]." *Webster's Ninth New Collegiate Dictionary* 1006 (1990) ("1: to confine within bounds"); *The American Heritage Dictionary of The English Language* 1487 (2009) ("To keep or confine within limits."); *Phillips*, 415 F.3d at 1318 (dictionaries are "among the many tools that can assist the court in determining the meaning of particular terminology to those of skill in the art of the invention").

The specification echoes the plain language of the claims. Like the claims, the Abstract provides that a "query generator formulates a query that restricts a search at the information retrieval system to the category of information in the information retrieval system identified by the assigned classification label." (Abstract (emphasis added).) The Summary of Invention similarly describes "automatically formulating a query that restricts a search at the information retrieval system for information concerning the set of entities to the category of information in the information retrieval system identified by the assigned classification label." (3:11-15 (emphasis added); *see also* Abstract, 3:29-32.) *See Genzyme Corp. v. Transkaryotic Therapies, Inc.*, 346 F.3d 1094, 1099 (Fed. Cir. 2003) (finding that statements in a patent's "Summary of the Invention" and "Abstract" portions limited the scope of a phrase in the patent's claims to a specific technique).

Further, Figure 39 depicts how the query restricts the search to the category identified by the assigned classification label. The specification explains that "the search is focused on documents found in the single node of the document hierarchy genetics, at 3910." (50:10-11 (emphasis added).) The "single node" searched in the information retrieval system is the category identified by the classification label "**genetics**:"



(Fig. 39 (highlighting added).) Importantly, no other category nodes, such as "Movies," "TV," "Music," "Business," "Food Science," or "Physics," are searched. Rather, the search is "confined to" the category "genetics," as Defendants' construction provides. *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1306, 1324 (Fed. Cir. 2008) ("The claims of the patent must be read in light of the specification's consistent emphasis on this fundamental feature of the invention").

As described in detail in pages 4-5 above, during prosecution of the patent-in-suit, Xerox repeatedly distinguished the claimed invention from prior art on the grounds that the query is formulated by the invention to "restrict" a search "to ... a category of information" Given its representations to the PTO, Xerox cannot now eliminate the "to restrict a search to ... category" language it represented to the Examiner distinguished the claims from the prior art. *See Seachange Int'l, Inc. v. C-COR, Inc.*, 413 F.3d 1361, 1372-73 (Fed. Cir. 2005); *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed. Cir. 1995).

B. Xerox Seeks to Eliminate the "Restrict to ... the Category" Language in the Claims.

Xerox's lengthy construction introduces opaque language – that does not even grammatically match the "to restrict a search" language being construed – in an effort to remove the limitation entirely. Indeed, Xerox's construction does not account at all for what it means "to restrict a search ... to the category"

Xerox's construction begins with "the set of data specifying search criteria" – i.e., Xerox's construction of "query." Xerox's construction thus recites that the query "includes" data items² that correspond to one or more entities and one or more classification labels. Mere "inclusion" in a query of items corresponding to one or more classification labels, however, cannot reasonably be said to give meaning to the claim's requirement that the query "restrict a search ... to the category of information ... identified by the assigned classification label." Nor can it be relied upon to improve the "precision recall" of an information retrieval system, as the invention purportedly does. (48:38.)

Rather, mere inclusion of a "data item" corresponding to a classification label can actually expand the scope of a search. For example, Xerox's proposed construction appears to read on a query requiring that documents include either the word "lilies" (as an identified entity) or the word "flowers" (as the assigned classification label). In contrast to the plain language of the claims, including the classification label "flowers" in this query would have a plainly expansive effect, pulling into the search results many items that refer to "flowers" but never mention "lilies." Xerox's construction gives no meaningful effect to the "restrict a search" language of the claims and should be rejected. *Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004) ("all claim terms are presumed to have meaning in a claim").

Moreover, in proposing a construction that appears potentially to encompass expansive uses of classification labels in queries, Xerox improperly seeks to reclaim claim scope that it surrendered during prosecution – e.g., when it distinguished Rennison's "expanding terms of a user query" from the claimed invention's restriction of a search to a category of information. (See Factual Background § III.) A patentee may not "adopt a position contradictory to that adopted before the PTO and expect to be believed." *TorPham, Inc. v. Ranbaxy Pharmaceuticals*, 336 F.3d 1322, 1329 (Fed. Cir. 2003);

² Xerox's introduction of the phrase "data items" has no support in the intrinsic evidence.

White v. Dunbar, 119 U.S. 47, 51-52 (1886) (patent claim is not a "nose of wax" to be twisted one way to preserve a patent's validity and another way to catch an alleged infringer).

II. "CATEGORIZING THE SELECTED DOCUMENT CONTENT . . . FOR ASSIGNING . . . A CLASSIFICATION LABEL." (1(C); 18(E))

<i>Term</i>	<i>Defendants' Construction</i>	<i>Xerox's Construction</i>
categorizing the selected document content using the organized classification of document content for assigning the selected document content a classification label.	using the organized classification of document content to categorize the selected document content and to assign to the selected document content a single classification label.	determining the subject matter of the selected document content using one or more of the categories defining the organized classification of document content and assigning the corresponding classification label(s) to the selected document content.

The crux of the parties' dispute is whether, as Defendants contend, a single classification label is assigned in the "categorizing" step and used to identify "the" single category used to restrict a search in the "formulating" step, or whether, as Xerox contends, more than one classification label may be assigned in the 'categorizing' step and employed in the "formulating" step.

The claims provide that each "classification label" for each category (or "class") in the organized classification of document content must correspond to a category in the information retrieval system. (1(a), 18(c).) They also require on their face that the formulated query restrict a search to a single category ("the category") of information that is identified by the classification label assigned to the document content ("the assigned classification label"). (1(d), 18(f).) *See Wyeth, LLC v. Intervet, Inc.*, C.A. No. 09-161-LPS, D.I. 187 at 12 (D. Del. March 22, 2011) ("the use of the definite article in 'the genome of PWD circovirus type B' indicates that one genome is contemplated and, hence, only one virus -not a group of viruses is referred to by the term PCVB) (emphasis added). Indeed, Xerox concedes the "assigned classification label" of the "automatically formulating ..." step and the "assigned classification label" of the "automatically categorizing" step are "the same classification label." (D.I. 133 at 2.)

Moreover, the "categorizing" step of the claims must be read in light of the "formulating" step with which it is logically connected. *Phillips*, 415 F.3d at 1313 (claim terms are construed in the context of the entire patent). The "categorizing" step culminates in the assignment of a classification label used in the "formulating" step to identify "the category" to which a search is to be restricted. Thus, the language of the 'formulating' step requires restriction to one category – "the category." The fact that a single category needs to have been identified as of the 'formulating' step (as illustrated in Fig. 39) indicates that a single classification label must be assigned in the 'categorizing' step.

If the language of the "formulating" step contemplated restriction of the search to "one or more categories ... each of which is identified by an assigned classification label," then it would make sense that – as Xerox asserts – the categorization process might result in assignment of multiple classification labels, and then the general rules regarding construction of "comprising" claims would support a construction of "assigning ... a classification label" allowing one or more labels to be assigned. But that is not the claim that Xerox drafted. Xerox attempts to avoid grappling with the logic of this connection between steps by, as previously discussed, simply ignoring the existence of the "restrict to ... the category" limitation in the claims.

Xerox's construction also provides for "determining the subject matter of the selected document content using one or more of the categories defining the organized classification of document content." Not only does the leap from "categorizing" to "determining" have no support, but Xerox's vague language makes it unclear whether categorization is required at all.

Accordingly, Defendants' construction should be adopted.

III. CLASSIFICATION LABEL, 1: (A), (C), (D); 18: (C), (E), (F)

<i>Defendants' Construction</i>	<i>Xerox's Construction</i>
classifying word or phrase.	a label in any format that identifies a category in the organized classification of document content.

Consistent with the plain meaning of "label" and the intrinsic evidence, Defendants' construction provides that a "classification label" is a "classifying word or phrase." Xerox's construction just repeats the word "label" without defining it, and adds other surplus language.

Again, the starting point of claim analysis is the claims. *Phillips*, 415 F.3d at 1312. In the claims, the classification label is associated with "each class in the organized classification of document content." (1(a), 18(c)). The claims further describe that "each classification label correspond[s] to a category of information in an information retrieval system." (76:15-17; 77:34-36; 78:20-22.) In this context, the classification label is a classifying word or phrase, as the word "label" is commonly used. For example, *Webster's* defines "label" as "a descriptive, classifying, or identifying word or phrase." *Webster's Third New Int'l Dictionary, Unabridged* (2002). *Random House* defines "label" as "a word or phrase indicating that what follows belongs in a particular category or classification." *Random House Unabridged Dictionary* (2d Ed. 1993).

Further, every classification label disclosed in the specification is a word, such as "Science," "Biology," "Physics," "Genetics," "Arts," "TV," "Music," etc... (See Fig. 39.) The same was true for the DMOZ ontology disclosed in the specification. (41:5-7.) For example, DMOZ uses a category such as "Arts," with subcategories like "Movies," "Television," and "Music:"

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Games Video Games, RPGs, Gambling...	Health Fitness, Medicine, Alternative...	Home Family, Consumers, Cooking...
Kids and Teens Arts, School Time, Teen Life...	News Media, Newspapers, Weather...	Recreation Travel, Food, Outdoors, Humor...
Reference Maps, Education, Libraries...	Regional US, Canada, UK, Europe...	Science Biology, Psychology, Physics...
Shopping Autos, Clothing, Gifts...	Society People, Religion, Issues...	Sports Baseball, Soccer, Basketball...
World Deutsch, Español, Français, Italiano, Japanese, Korean, Nederlands, Polska, Svenska...		

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(Ex. C.) *Kinetic Concepts, Inc. v. Blue Sky Med. Group, Inc.*, 554 F.3d 1010, 1018-19 (Fed. Cir. 2009) (construing the term "wound" as limited to skin wounds because "[a]ll of the examples described in the specification involve skin wounds") (citations omitted); *SafeTCare Mfg., Inc. Tele-Made, Inc.*, 497 F.3d 1262, 1270 (Fed. Cir. 2007) (same). In sum, the patent gives no suggestion whatsoever that a "classification label" should depart from the plain meaning that it must be a word or phrase.

Xerox's construction circularly uses both words from the term at issue, "classification" and "label," which alone shows it should be rejected. *Bd. of Trustees of Leland Stanford Junior Univ. v. Roche Molecular Sys.*, No. 05-04158, 2007 WL 5787309, at *12 (N.D. Cal. Nov. 27, 2007) (rejecting defendant's "self-referential" proposed claim construction as one which "does nothing to elucidate the meaning of the disputed term.") Nor is there any support for the additional language Xerox uses to surround "classification" and "label" in its construction.

IV. QUERY (1: PREAMBLE, 1 (D); 18: (B), (F))

<i>Defendants' Construction</i>	<i>Xerox's Construction</i>
Request for search results.	a set of data specifying search criteria.

As Defendants' construction provides, and as the claims make clear, a query is used to "search." The claims also talk about the query being "performed" and used to obtain "results":

11. The method according to claim 10, further comprising ranking results from the query performed at the information retrieval system in accordance with one of the assigned classification label and the characteristic vocabulary. ¹⁵

17. The system according to claim 16, further comprising a content manager for enriching the selected document content with results provided from the information retrieval system using the query.

In this context, and as a matter of common sense, the query is a "request" to the information retrieval system to make a "search," and it is through this search "request" that search "results" are obtained.

Phillips, 415 F.3d at 1314 ("[T]he context in which a term is used in the asserted claim can be highly instructive.").

The specification similarly uses the term "query" in the context of a "request" to obtain search "results," as Defendants' construction provides. For example, the specification states that the field of invention "relates generally to the management and use of documents, and in particular, to improved management and use of documents which may act as agents, generating requests for information . . .". (1:37-39 (emphasis added).) The specification also states "[a]fter processing the query by submitting it to an information retrieval system (e.g., Google, Yahoo, NorthernLights), the query can be refined by filtering and/or ranking the results returned by the query mechanism using the classification labels or its associated characteristic vocabulary in a number of ways." (49:49-54 (emphasis added).) Thus, the query is a request to an information retrieval system that, like Google, Yahoo! and Northern Lights did at the time, returns search "results" in response to "search requests," just as Defendants' construction provides. (*Id.*)

Xerox's construction – "a set of data specifying search criteria" – acknowledges that a query is done in connection with a "search." Yet, it improperly omits the notion that the query is a "request" for search "results." Rather, under Xerox's view, the search criteria alone is the query. The specification makes clear, however, that the "query", shown in the portion of Figure 39 below as 3930, is not just the search criteria, but also the http request for results from, e.g., www.google.com, as shown below:

QUERY WITH CONTEXT: Science + Biology + Genetics (e.g., http://www.google.com/search?q=seven+up&cat=gwd%2Ftop%2Fscience%2Fbiology%2Fgenetics)	3930
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Xerox's construction to the contrary should be rejected.

V. SELECTED DOCUMENT CONTENT (1: PREAMBLE, (B), (C); 18: (B), (D), (E))

<i>Defendants' Construction</i>	<i>Xerox's Construction</i>
Indefinite.	all or part of the content of a document in electronic form.

Neither the claims nor the specification provides any guidance regarding what "selected document content" is to define the scope of the term. Rather, the intrinsic evidence is silent as to how document content is selected or by whom or what it may be selected. Notably, Xerox's construction ignores these questions entirely, by not accounting for what it means to be "selected" at all. The term is incapable of construction, insolubly ambiguous and indefinite.

The preamble of the independent claims refers to "selected document content" and the claim discusses what is done in reference to "selected document content":

1. A method for automatically generating a query from selected document content, comprising:

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automatically identifying a set of entities in the selected document content for searching additional information related thereto using the information retrieval system; automatically categorizing the selected document content using the organized classification of document content for assigning the selected document content a classification label from the organized classification of content; and

The claims do not explain, however, who or what is "selecting" or how the document content is selected. In fact, there is no antecedent basis for "selected document content." *See Halliburton Energy Services, Inc. v. M-ILLC*, 514 F.3d 1244, 1249 (Fed. Cir. 2008) (explaining a claim could be indefinite "if a term does not have proper antecedent basis where such basis is not otherwise present by implication or the meaning is not readily ascertainable").

The specification does not clarify what it means for document content to be selected. It states unhelpfully that "[i]n one mode of operation, a document service request is applied to selected

document content." (41:10-13.) This sentence is no more clear than the claim language with respect to who or what is selecting or how the selecting is done. The phrase "selected document" is used elsewhere in the specification, but never in a manner lending it a definite meaning. (13:54-55 ("the user is able to apply document services available on networks 516 or 522 to selected document tokens, including but not limited to services offered by the meta-document server 200"), 22:53-56 ("The expanded document, which can be viewed as a list of documents, consists of documents selected by the user and the documents linked to those selected documents"); 32:38-41 ("a user may specify that a particular service behavior be applied to all selected documents, a currently selected document, or a selection at 2712 (2712 is shown in Fig. 27 as allowing user to apply service behavior to "selection only") (emphasis added in each case).)

Xerox's construction does not resolve the ambiguity regarding "selected"; it adds to it. In fact, Xerox's construction does not account for "selected" all. It merely provides that selected document content is "all or part of the content of a document in electronic form." It includes part of the term to be construed, "document" and "content," but the notion of "selected" is absent. For the document content to be "selected," however, it would seem that some kind of choice must have been made regarding that content. *Webster's Third New Int'l Dictionary, Unabridged* (2002) (defining "to select" as "to choose from a number or group"). That Xerox itself does not ascribe a meaning to "selected" in its construction shows its construction should be rejected, and further demonstrates that in the context of this patent the term is incapable of construction and indefinite.

VI. ORDER OF STEPS

<i>Defendants' Construction</i>	<i>Plaintiff's Construction</i>
<p>Claim 1:</p> <p>Step (a) must be performed before steps (c) and (d).</p> <p>Step (b) must be performed before step (d).</p> <p>Step (c) must be performed before step (d).</p> <p>Claim 18:</p> <p>Step (c) must be performed before steps (e) and (f).</p> <p>Step (d) must be performed before step (f).</p> <p>Step (e) must be performed before step (f).</p> <p>Claim 2:</p> <p>The steps of claim 1 must be performed before the step of 2.</p> <p>Claim 19:</p> <p>The steps of claim 18 must be performed before the step of 19</p>	<p>Claim 1:</p> <p>Step (a) must be performed before steps (c) and (d).</p> <p>Step (b) must be performed before the completion of step (d).</p> <p>Step (c) must be performed before the completion of step (d).</p> <p>Claim 18:</p> <p>Step (c) must be performed before steps (e) and (f).</p> <p>Step (d) must be performed before the completion of step (f).</p> <p>Step (e) must be performed before the completion of step (f).</p> <p>Claim 2:</p> <p>The step of Claim 2 must be performed during or after the completion of step (d) of Claim 1.</p> <p>Claim 19:</p> <p>The step of Claim 19 must be performed during or after the completion of step (f) of Claim 18.</p>

Method claims must be construed so that the steps are performed in the order recited "if, as a matter of logic or grammar, [the steps] must be performed in the order written" and also when "each subsequent step reference[s] something logically indicating the prior step has been performed." *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369 (Fed. Cir. 2003); *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1342 (Fed. Cir. 2001). Moreover, where "most of the steps" of a "method claim refer to the completed results of the prior step," the steps must be "performed in order." *E-Pass Techs., Inc. v. 3Com Corp.*, 473 F.3d 1213, 1222 (Fed. Cir. 2007).

That is precisely the case here. For example, in claim 1, as shown with annotations on the right, logically, step (c), "using the organized classification of document content . . ." cannot be performed until after the "organized classification of document content" is defined in step (a). Likewise, "automatically formulating a query . . . for information concerning the set of entities" in step (d), cannot be performed until the "set of entities" is identified in step (b); and the applying the query "to the category of information . . . identified by the assigned classification label" in step (d), cannot be performed until the "selected document content" is assigned "a classification label from the organized classification of content" in step (c). In other words, step (a) must be performed before steps (c) and (d). Step (b) must be performed before step (d). Step (c) must be performed before step (d). These steps must also be performed before the step of dependent claim 2 of "limiting the query by adding terms relating to context information surrounding the set of entities in the selected document content." The query cannot be limited in claim 2 before it is formulated in claim 1(d). The same order of steps argument applies as to asserted claims 18 and 19.

1. A method for automatically generating a query from selected document content, comprising:
 - a. defining an organized classification of document content with class in the organized classification of document content having associated therewith a classification label; each classification label corresponding to a category of information to an information retrieval system;
 - b. automatically identifying a set of entities in the selected document content for searching additional information related thereto using the information retrieval system;
 - c. automatically categorizing the selected document content using the organized classification of document content for assigning the selected document content a classification label from the organized classification of content; and
 - d. automatically formulating the query to restrict a search at the information retrieval system for information concerning the set of entities to the category of information in the information retrieval system identified by the assigned classification label.

Xerox does not dispute there is a logical order in the claims. For example, Xerox agrees that that step 1(a) must be performed before steps (c) and (d). Nevertheless, Xerox contends that while part of a claimed step must be performed before a "completion" of a subsequent step, the same step may start before completion of the prior step. Specifically, Xerox contends that step 1(b) must be performed before "completion" of step 1(d) and step 1(c) must be performed before the "completion"

of step 1(d). There is no basis for Xerox's creative parsing of the claims and division of steps in this manner. Nothing in the claims or specification suggest that the method claims are to be divided and performed in a way that is contrary to the common sense logical reading of the claims.

Accordingly, the Court should construe these claims so that the steps are performed in the logical order set forth by Defendants' constructions.

VII. "CHARACTERISTIC VOCABULARY"

<i>Defendants' Construction</i>	<i>Xerox's Construction</i>
one or more words or phrases that describe the category of information corresponding to the class.	one or more words or phrases that describe a class in the organized classification of document content.

The parties agree that a characteristic vocabulary consists of "words or phrases that describe." The parties, however, disagree whether the words or phrases describe the category of information corresponding to the class, or a class in the organized classification of document content. The specification resolves this dispute. It provides that a "characteristic vocabulary" is the same as a "category vocabulary." (49:44-45 ("characteristic vocabulary (i.e., category vocabulary)").) It further provides that a category vocabulary "consists of one or more terms that describe the category." (51:36-37.) Defendants' construction follows this intrinsic evidence explicitly. Xerox's construction departs from it without basis and should be rejected.

Conclusion

For these reasons, this Court should adopt Defendants' constructions of the disputed terms.

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Appendix A

For the Court's convenience, the asserted claims of the '979 patent are listed below, with the disputed claim language emphasized.

1. A method for automatically generating a *query* from *selected document content*, comprising:
 - defining an organized classification of document content with each class in the organized classification of document content having associated therewith a *classification label*; each *classification label* corresponding to a category of information in an information retrieval system;
 - automatically identifying a set of entities in the *selected document content* for searching additional information related thereto using the information retrieval system;
 - automatically *categorizing the selected document content using the organized classification of document content for assigning the selected document content a classification label* from the organized classification of content; and
 - automatically formulating the *query to restrict a search at the information retrieval system for information concerning the set of entities to the category of information in the information retrieval system identified by the assigned classification label.*
2. The method according to claim 1, further comprising limiting the *query* by adding terms relating to context information surrounding the set of entities in *the selected document content*.
3. The method according to claim 2, wherein the number of terms added is limited to a predefined number.
5. The method according to claim 1, wherein the organized classification of document content is defined using a hierarchical organization.
10. The method according to claim 1, wherein each class in the organized classification of document content has associated therewith a characteristic vocabulary.
18. An article of manufacture for use in a computer system, comprising:
 - a memory;
 - instructions stored in the memory for operating a method for automatically generating a *query* from *selected document content*, comprising:

defining an organized classification of document content with each class in the organized classification of document content having associated therewith a *classification label*; each *classification label* corresponding to a category of information in an information retrieval system;

automatically identifying a set of entities in the *selected document content* for searching information related thereto using the information retrieval system;

automatically *categorizing the selected document content using the organized classification of document content for assigning the selected document content a classification label* from the organized classification of content; and

automatically formulating the *query to restrict a search at the information retrieval system for information concerning the set of entities to the category of information in the information retrieval system identified by the assigned classification label*.

19. The article of manufacture according to claim 18, wherein the instructions stored in the memory further comprise limiting the *query* by adding terms relating to context information surrounding the set of entities in the *selected document content*.