

EXHIBIT E

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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WIRELESS INK CORP., :
: :
Plaintiff, :
: :
-against- :
: :
FACEBOOK, INC.; GOOGLE, INC.; :
YOUTUBE, INC.; YOUTUBE, LLC.; :
MYSpace, INC., :
: :
Defendants. :
----- X

No. 11 Civ. 1751 (PKC)

ECF CASE

**DEFENDANT AND COUNTERCLAIMANT FACEBOOK, INC.’S OPPOSITION TO
WIRELESS INK CORP.’S OPENING CLAIM CONSTRUCTION BRIEF REGARDING
U.S. PATENT NO. 6,199,157**

Defendant and Counterclaimant Facebook, Inc. respectfully submits this response to the opening claim construction brief regarding U.S. Patent No. 6,199,157 (the “’157 patent”) filed by Wireless Ink Corp. (“Wireless Ink”) on September 16, 2011 (D.I. 67).

I. INTRODUCTION

The ’157 patent broadly describes a unique and novel way of configuring items based on selections that a user makes. The claims written to broadly cover the inventions disclosed in the specification, and, by law, the Court’s constructions must track these broad disclosures.

Wireless Ink, on the other hand, would have the Court improperly focus on a single embodiment and use it to narrow the claims, while ignoring the rest of the specification. As such, the overarching theme of Wireless Ink’s brief and its incorrect proposed constructions is that somehow the patent-at-issue is limited to hardware or physical machines. But the specification could not be more clear that the invention was *not* so limited. In fact, the specification explicitly describes an embodiment where a user manual is modified by selecting paragraphs of text from a hierarchical option tree, much like creating/choosing text for a website. Therefore, the claims cannot be limited as Wireless Ink suggests. The bulk of the disputes revolve around this central issue and are easily resolved if the Court follows the rule from *Phillips*, which requires claims to be read as broadly as the specification supports, and not artificially narrowed by importation of limitations from a single exemplary embodiment.

II. FACEBOOK’S CONSTRUCTIONS SHOULD BE ADOPTED

A. “configuring an item”

Disputed Term	Facebook’s Construction	Wireless Ink’s Construction
configuring an item	Prepare an item for use such that it contains desired optional components	Choosing appropriate software attributes to operate the device, hardware or machine matching chosen

claims.” However, unlike Wireless Ink, Facebook properly turned to the specification to determine what constitutes the “selector” or “generator.” The specification of the patent explains that the various components of the invention may be implemented in “hardware, software, or a combination thereof.” (’157 patent, Col. 11:8-11.) As Facebook’s proposed construction actually defines the nouns at issue – selector and generator – this construction should be adopted.

III. CONCLUSION

For the reasons set forth above and in its opening brief, Facebook respectfully requests that the Court enter a claim construction order adopting Facebook’s proposed constructions.

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COOLEY LLP

By: /s/ Heidi L. Keefe

Heidi L. Keefe

Jonathan Bach (JPB 9710)
Arastu K. Chaudhury (AC 0101)
1114 Avenue of the Americas
New York, New York 10036
Phone: (212) 479-6000
Fax: (212) 479-6275

Michael G. Rhodes (*Pro Hac Vice*)
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Phone: (415) 693-2000
Fax: (415) 693-2222

Heidi L. Keefe (*Pro Hac Vice*)
Mark R. Weinstein (*Pro Hac Vice*)
Elizabeth L. Stameshkin (*Pro Hac Vice*)
3000 El Camino Real
Five Palo Alto Square
Palo Alto, CA 94306-2155
Phone: (650) 843-5000
Fax: (650) 857-0663

Attorneys for Facebook, Inc.

CERTIFICATE OF SERVICE

This is to certify that on October 7, 2011, a true and correct copy of the foregoing Defendant and Counterclaimant Facebook, Inc.'s Opposition to Wireless Ink Corp.'s Opening Claim Construction Brief Regarding U.S. Patent No. 6,199,157 has been served on registered counsel of record via the Court's ECF system.

/s/ Heidi Keefe _____

Heidi Keefe