

**EXHIBIT F**

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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 WIRELESS INK CORPORATION,

4 Plaintiff and  
4 Counterclaim Defendant,

5 v. 11 Civ. 1751 (PKC)

6 FACEBOOK, INC.,

Markman Hearing

7 Defendant and  
8 Counterclaim Plaintiff.

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New York, N.Y.  
November 17, 2011  
3:30 p.m.

12 Before:

13 HON. P. KEVIN CASTEL

District Judge

15 APPEARANCES

17 JEREMY S. PITCOCK  
17 Attorney for Plaintiff and Counterclaim Defendant

19 COOLEY LLP  
19 Attorneys for Defendant and Counterclaim Plaintiff

20 BY: HEIDI L. KEEFE  
20 ELIZABETH L. STAMESHKIN

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1 (Case called)

2 THE COURT: Good afternoon.

3 THE CLERK: Plaintiff ready?

4 MS. KEEFE: Absolutely. Your Honor, have happy news.

5 We sent your Honor via fax last night and then again this  
6 morning a new, revised chart which eliminated three of the  
7 terms, so your Honor doesn't have to construe those. They have  
8 been moved from our contested definitions to our claim terms to  
9 which the parties agree.

10 Within the last short amount Mr. Pitcock and we have  
11 managed to also come to an agreement regarding the word  
12 "implementing," which appears in both claim term number 9 in  
13 the chart and claim term number 18. The parties would like to  
14 propose for your Honor that we agree that "implementing" means  
15 "putting into effect according to or by means of a definite  
16 plan or procedure."

17 After that word is construed, we think that the rest  
18 of the words will be dealt with with other constructions, so  
19 your Honor doesn't need to deal with those terms either,  
20 because we have come to an understanding among and between  
21 ourselves as to what "implementing" means.

22 THE COURT: Do you agree with that, Mr. Pitcock?

23 MR. PITCOCK: Yes, your Honor, I believe that's  
24 correct.

25 THE COURT: I am adopting that as the Court's  
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1 construction.

2 MS. KEEFE: We appreciate that very much, your Honor.

3 Your Honor, I would like on the record to thank Mr.

4 Pitcock for engaging with us up to and including before court

5 started so we could try to reduce the terms for your Honor.

6 With the rest of the terms, I believe that any of them

7 rise and fall under different interpretations of what the, if

8 you will call it, gist of the invention of the '157 patent is.

9 One of the most fundamental disputes between the parties is

10 whether the patent is limited to machines or whether it is to

11 be read more broadly to include things that are not just

12 machines but could be something other than a machine.

13 When the '157 patent was being written up, was being

14 created, the problem at hand was basically that you want to be

15 able to make unique instances of things. People want things to

16 be user-configurable. They want a specialized car, not just a

17 regular car on the lot. They want their car to have automatic

18 transmission and leather seats as opposed to automatic

19 transmission and cloth seats. Or you would like a user manual

20 that has the paragraphs according to just the things that you

21 want to learn about, not all of the extraneous text, etc.

22 What happened with the invention in the patent was

23 that configuration and customization of items was really what

24 was at issue. The patent solves the problem of how difficult

25 and time-consuming it can be to customize items, to customize

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1 my idea of configuring things, of picking options and having  
2 options follow different characteristics and attributes, use  
3 that for things other than configuring machines. The exact  
4 language from column 5/lines 40 to 43: "Embodiments of the  
5 present invention contemplate that the building block contents  
6 could also be used for concepts other than for configuring  
7 machines."

8           It goes on to say that one example is where the  
9 building blocks are parts of text for an instruction manual.  
10 It talks about how you may be at a car dealership and your  
11 Honor decides which car you're going to purchase and which  
12 options you like.

13           Then, for example, if I were the salesman, I would go  
14 back into my office and I would say the judge has chosen a car  
15 with options A, B, and C. I type into the computer, I need a  
16 manual that makes sure to address those options, that makes  
17 sure to include those paragraphs of text. The claim tells us  
18 ~~how all of that is going to be done.~~

19           For example, if we walk all the way through the claim,  
20 the computer-implemented method for configuring a user manual  
21 per the example in the specification wherein the user manual  
22 comprises two or more optional components. In this case, for  
23 example, the optional component described in this portion of  
24 the specification is air conditioning. We read through a  
25 specific example. If the buyer chooses a car with air

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1 conditioning, then the user of the present invention, in other  
2 words the car salesman, could choose an air conditioning option  
3 when setting up the manual.

4 So, we have to comprise two or more optional  
5 components. The options are air conditioning and maybe air  
6 conditioning with a thermostat. If we go down, in the rest of  
7 this embodiment it talks about how the option can be the air  
8 conditioning -- may I approach the screen, your Honor?

9 THE COURT: You may.

10 MS. KEEFE: The option chosen may be air conditioning.  
11 But it goes on and says if the user, meaning the person who is  
12 typing up the manual, further chooses that the air conditioning  
13 unit contain a thermostat, he then chooses the thermostat  
14 option.

15 When I first read this, I have to admit, your Honor, I  
16 thought to myself, that's kind of crazy, don't all air  
17 conditions have thermostats? I called my father, and he  
18 reminded me that in fact that is not true, that you can have an  
19 air conditioner without a thermostat. Some of the original air  
20 conditioners just blew cold air. They didn't care what the  
21 temperature was, they just continuously continued to blow the  
22 cold air. And they had two positions, on and off. You were  
23 either on or off. Those were your speeds. That's how that air  
24 conditioner worked.

25 But in modern air conditioners, especially ones in  
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1 assembly.

2           If you look at slide 13, when it's talking about the  
3 option tree, it displays the corresponding physical components.  
4 The options are a data abstraction that are supposed to match  
5 actual physical components, such as air conditioning or a  
6 thermostat or other physical parts of an item, if we are not  
7 going to define it in particular. That is how it is used in  
8 the patent repeatedly.

9           THE COURT: Thank you, Mr. Pitcock.

10           I'm construing the term "optional components" to mean  
11 "a part or portion of an item that may or may not be selected."  
12 I'll hear the next term.

13           MS. KEEFE: Your Honor, the next term is "options."  
14 With respect to "options," we attempted to come as close to Mr.  
15 Pitcock's language as possible to eliminate the disputes. What  
16 remains is that we are proposing that options are data that  
17 correspond to the optional components of an item. The only  
18 dispute is whether the data must be user-manipulated, as Mr.  
19 Pitcock suggests, and whether it's limited to physical  
20 components.

21           Options, your Honor, are not user-manipulated. They  
22 are user-selectable but not user-manipulated. User-manipulated  
23 would mean that the option itself has to be somehow fussed  
24 around with. The option is air conditioning or air  
25 conditioning with a thermostat. That is nothing that the user

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1 Is "structure" the right word?

2 MR. PITCOCK: I would agree with that, your Honor.

3 THE COURT: Let me hear from the defendants.

4 MS. STAMESHKIN: As long as the structure could  
5 include hardware and/or software as per the specification.

6 THE COURT: I'm not deciding that. It seems to me  
7 there is no reason why it couldn't be. It is my intention that  
8 it include that. But I think that your definition was  
9 limiting, and that is part of what my issue was.

10 MS. STAMESHKIN: We're fine with that.

11 THE COURT: "Configuration generator: A structure  
12 that implements at least one attribute corresponding to  
13 selected options and places attributes into an instance  
14 creation file." Mr. Pitcock, is that acceptable?

15 MR. PITCOCK: Yes, your Honor.

16 THE COURT: Is that acceptable?

17 MS. STAMESHKIN: With the same caveats, yes.

18 THE COURT: What else?

19 MS. KEEFE: I know you're going to be stunned, your  
20 Honor, but that's it.

21 THE COURT: Thank you. I could not have done this but  
22 for the fine briefing and the very fine arguments presented. I  
23 thank you for making this task easier for me.

24 We are adjourned.

25 (Adjourned)

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