

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHOLEM WEISNER, :
: :
Plaintiff, :
: :
-against- :
: :
GOOGLE LLC and SHMUEL NEMANOV. :
: :
Defendant and Involuntary Party. :
: :
----- X

ORDER

20 Civ. 2862 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Pursuant to *Markman v. Westview Instr., Inc.* 517 U.S. 370 (1998), the Court has reviewed the parties’ respective positions regarding ambiguities in the claim language of U.S. Patent Nos. 10,394,905 and 10,642,911. After consideration of the proposed constructions submitted by the parties, the Court adopts the constructions set out in Column Four of the attached chart.

SO ORDERED.

Dated: April 4, 2023
New York, New York

/s/ Alvin Hellerstein
ALVIN K. HELLERSTEIN
United States District Judge

Weisner et al. v. Google LLC, Case No.: 20-cv-02862-AKH
U.S. Patent Nos. 10,394,905 and 10,642,911

Claim Phrase ^{1,2}	Plaintiff Weisner's Proposed Construction ³	Defendant's (Google) Proposed Construction	Court's Construction
<p>'905 Patent, Claims 1, 11 and 14, <u>Preamble</u></p> <p>“method/system of combining enhanced [computerized] searching for a target business with use of humans as physical encounter links”</p>	<p>'905 Specifications 4:30-55: Id. 17: 10-65 Id. 18: 1-65 Id. 19:1-65 Id. 20:1-65 Id. 21: 1-10 Id 4:3-55</p> <p>The method of enhancing computerized internet searches for for a target business by implementing utilization of human (individual member carrying a mobile device) physical encounters with business locations as ranking parameters to improve, custom tailor, and personalize web search results.</p>	<p>Preamble is limiting; The claimed method/system adjusts search result rankings by consulting records of humans' physical encounters to identify physical location history entries members have in common.</p> <p><i>See, e.g.</i>, FH-000439, FH-000447-49, FH-000451, FH-000627, FH-00689-90, '905 patent at 4:35-55, 17:53-18:35, FIG. 9; <i>see also</i> FH-000219-220, FH-000264-266.</p>	<p>Methods and systems of enhancing searches for a business by use of records of humans' physical encounters.</p>

¹ Disclaimer: listing a claim phrase in this table on January 12, 2023 does not prevent a party from taking a position at a later date that the claim phrase requires no construction or that a listed claim phrase should either be broken into shorter phrases or combined with other phrases to form a longer listed claim phrase.

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<p>'905 Patent, Claims 1, 11 and 14 '911 Patent, Claims 1 and 12</p> <p>“processing system”</p>	<p>905 Specification; 4: 45 Id. 14:30</p> <p>Processing system that utilizes manipulation and control of information (data) within the computer system that houses the database.</p>	<p>No construction necessary; plain and ordinary meaning.</p> <p><i>See, e.g.</i>, '905 patent at FIGs. 1-6, 9, 2:33-41, 3:30-32, 4:36-55, 21:34.</p>	<p>No construction necessary.</p>

² For listed phrases that are partially bolded, Google proposes to construe those parts of the claims that are bolded (having originally used ellipses in place of intervening words in the claim for which it was not requesting a construction). The non-bolded parts comprise additional language appearing in the claims that neither party proposes to construe; Plaintiff asked that the ellipses should be filled in the Patent Claim language so the phrase would reflect the Patent Claim. Bracketed words are provided where largely the same phrase is included in multiple claims with the differences shown by the bracketed words.

³ Plaintiff Weisner reserves his ability to cite to other Claim Specifications in the 905 and 911 Patents as supported herein and is not bound by the Claim specification(s) cited herein.

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<p><u>'905 Patent, Claims 1 and 14</u> “providing an application”</p>	<p>Id. 3:20-30 Id. 4:25-30 Id. 8:30-45</p> <p>Software installed on a device that allows a user to interact with their account at system network database.</p>	<p>No construction necessary; plain and ordinary meaning.</p> <p><i>See, e.g.</i>, '905 patent at 3:23-29, 4:24-31, 8:31-47, 9:30-31, 9:37-46, 14:27-34, 15:21-30.</p>	<p>No construction necessary.</p>

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<p><u>'905 Patent, Claims 1, 11 and 14</u></p> <p>“upon a physical encounter between the individual member and a stationary vendor member of a plurality of stationary vendor members of the member network [at a physical premises of the stationary vendor member], to transmit key data of the stationary vendor member and of the individual member to the processing system automatically as a result of the physical encounter”</p>	<p>Id. 7:45-55 Id. 11:10-40 Id. 15:45-60</p> <p>Upon a Physical Encounter meaning that a mobile user physically entered a stationary member business premises (Stationary vendor means any business/ vendor who sells goods, or services at a location) that is part of a plurality of stationary vendor members.</p> <p>Key data (meaning URLs, or information attached to members' accounts and system network URLs such as location data, type of business, date/time data, contact information, physical encounters, etc.) from both the business and store visitor are automatically transmitted to the processing system to be implemented in improving web search results.</p>	<p>When an individual member enters a stationary vendor member's physical business location that causes an application on the individual member's device to, at that time, automatically transmit to the processing system the individual member's “key data” and “key data” received from the stationary vendor member.</p> <p><i>See, e.g., '905 patent at Abstract, 1:6-10, 2:33-41, 3:18-29, 15:15-23, 11:9-29; see also '905 patent at FIG. 3, 7:45-55, 8:31-43, 9:5-8, 11:29-39, 15:45-60, FH-00311-312, FH-000439.</i></p>	<p>When an individual who is a member of the network enters the physical business location of a stationary vendor which is also part of the network, that causes an application on the individual member's device to automatically transmit to the processing system the “key data” of the stationary vendor member and of the individual member.</p>

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<u>'905 Patent, Claims 1, 11 and 14</u> "[upon] a location of each individual member's [device] determined by the positioning system"	Id 13:30-35 Id 15:45-50 The application software determines instances of physical visits to business locations by making use of a positioning system such as GPS or any other type of positioning system.	The individual member entering and exchanging "key data" with the stationary vendor member triggers the positioning system to determine the location of the individual member [device]. <i>See, e.g.</i> , '905 patent at 13:54-67, 13:31-34.	The individual member entering and exchanging "key data" with the stationary vendor member automatically causes the positioning system to determine the location of the individual member [device].
<u>905 Patent, Claims 1, 11 and 14</u> <u>'911 Patent, Claims 1 and 12</u> "a stationary vendor member"	Id 15:15-20 Any business/vendor that is a member of the network who sells goods, or services at a location.	No construction necessary; plain and ordinary meaning. <i>See, e.g.</i> , '905 patent at 7:46-52.	A business at a physical location that is a member of the member network.
<u>'905 Patent, Claims 1, 11 and 14</u> "key data"	Id 9:10-25 Key Data includes a URL itself, or data describing the nature of business type and information or advertisements associated with a URL that a business chooses to	Data, including a URL or other information, that the member previously designated for transmission to other members during "physical encounters." <i>See, e.g.</i> , '905 patent at 3:37-40, 7:37-40, 9:5-16, 21:32-33;	The information which a member has selected to receive from or transmit to the network database or other members.

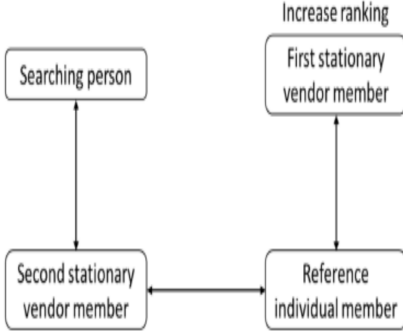
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	have that is updatable by vendor member.	<i>see also</i> ’905 patent at Abstract, 4:6-9, 11:20-29, 17:20-34, FIGs. 1 and 9.	
<p><u>’905 Patent, Claims 1, 11 and 14</u> “physical location histories”</p>	<p>Physical Location Histories meaning the totality of the captured physical interactions between individual mobile members and stationary vendor members over time.</p>	<p>Logs with entries that capture members’ physical interactions and include “key data” of the interacting members.</p> <p><i>See, e.g.</i>, ’905 patent at 21:27-33, Abstract (lines 1-12), 1:4-10, 2:33-41, 8:22-26, 10:39-48; <i>see also</i> ’905 patent at 1:33-37, 2:63-3:22, 3:37-40, 7:61-64, FIG. 5, 8:31-42, 11:20-39, FH-000264-266, FH-000307, FH-000311, FH-000312.</p>	<p>Histories of physical interactions over time that include “key data” of the interacting members.</p>

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<p><u>'905 Patent, Claims 1, 11 and 14</u></p> <p>“increases the ranking of a first stationary vendor member based on the physical location relationship wherein the relationship is as follows”</p>	<p>Id 17:50-67 Id 18:1-15 Id 20:1-65</p> <p>The system implements physical location histories to improve web search algorithms that provide the pieces of content that will best answer a searcher's query, which means that results are ordered by most relevant to least relevant. This is accomplished by comparing a plurality of physical location histories of individual members where they had in-common visits to certain businesses or class of businesses or services. physical location relationship meaning as explained below;</p>	<p>Improves the position of the first stationary vendor member in search result order based on the physical location relationship further described in (a) and (b) below.</p> <p><i>See, e.g.</i>, '905 patent at 4:42-55, 17:53-18:15, FIG. 9; <i>see also</i> '905 patent at 17:8-19, 17:43-52, Abstract (lines 1-8, 16-17), 18:16-36, 19:27-44, 19:45-20:1.</p>	<p>Improves the search result ranking of the first stationary vendor member based on a physical location relationship wherein:</p>

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<p><u>’905 Patent, Claims 1, 11 and 14</u></p> <p>“(a) the reference individual member’s physical location history includes key data of the first stationary vendor member; and (b) the searching person’s physical location history and the reference individual member’s physical location history each include key data of a second stationary vendor member”</p>	<p>Id 17:50-65 Id 18:1-15</p> <p>When a searching person has physically visited a business that a reference individual (who they may have never met, from a plurality of reference individuals) has also visited, other businesses visited by the reference individual that are relevant to the search are increased in ranking for search results:⁴</p>  <pre> graph TD SP[Searching person] --> SVM[Second stationary vendor member] FSTM[First stationary vendor member] --> RIM[Reference individual member] SVM <--> RIM RIM -- Increase ranking --> FSTM </pre>	<p>A reference member’s physical location history has: (1) key data from the first stationary vendor member, and (2) key data from a second stationary vendor member which key data from the second stationary member is also in the searching members’ physical location history.</p> <p><i>See, e.g., ’905 patent at 21:50-63; 4:42-55, 17:53-18:15, FIG. 9; see also 17:8-19, 17:43-52, Abstract (lines 1-8, 16-17), 18:16-36, 19:27-44, 19:45-20:1.</i></p>	<p>(a) key data from the first stationary vendor member is included in a reference individual member’s physical location history, and (b) key data from a second stationary vendor member is included in both the searching person’s physical location history and the reference individual member’s location history.</p>

⁴ Google Diagram from *Weisner v. Google LLC*, 51 F.4th 1073, 1086 (October 13, 2022)(“Even Google recognizes the specificity in this process with the following diagram from its appeal brief [Appellee’s Br.12] illustrat[ing the relationships]”).

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<p>'911 Patent, Claims 1 and 12, <u>Preamble</u></p> <p>“method/system of enhancing digital search results for a business in a target geographic area using URLs of location histories”</p>	<p>911 Patent Specification</p> <p>Id.15: 1-20 Id.17:30-35 Id. 20:60-65 Id. 21:1-10</p> <p>The system enhances digital search results [for a business in a target geographic area] by utilizing URLs of location histories that record details of physical interactions such as frequency of interactions, geographic area, time and type of business that were previously visited by individual members.</p>	<p>Preamble is limiting; claimed method/system adjusts search result ranking by considering URLs of businesses found in a log of entries that captured information about physical interactions between individual members and stationary vendor members.</p> <p><i>See, e.g.</i>, FH-000451, FH-001266-67, FH-001309, FH0001314; '911 patent at 4:43-62, 17:12-23, FIG. 9, 15:25-39, 17:47-56, 18:39-52, 20:62-67.</p>	<p>Methods and systems of enhancing searches by use of URLs of stationary vendor members found in a log of entries that captured information about physical interactions between individual members and stationary vendor members.</p>

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<p><u>'911 Patent, Claims 1 and 12</u></p> <p>“an account to (i) an individual member and (ii) a stationary vendor member, of a member network, the account associated with a URL”</p>	<p>Id 15:15-25</p> <p>Individual mobile user members of the network and business vendor members of the network are both registered with accounts to access and enable the features of the system network. Each individual account and its key data are connected to an individualized URL thereby making the data internet searchable and improving web algorithm search results.</p>	<p>Each of the individual member account and stationary vendor member account has a unique URL associated with it.</p> <p><i>See, e.g.</i>, '911 patent at 3:37-49, 9:1-9, 11:31-36.</p>	<p>Each individual member and stationary vendor member has an account, and each of these accounts has a unique URL associated with it.</p>

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<p><u>’911 Patent, Claims 1 and 12</u></p> <p>“accumulate a location history on a database maintained by the at least one processing system from physical encounters by the individual member at multiple stationary vendor members upon the mobile communication device being set to enter instances of a physical encounter between the individual member carrying the mobile communication device and the stationary vendor member at a physical premises of the stationary vendor member”</p>	<p>Id 5:45-60 Id 13:55-65 Id 14:1-5 *See ’911 figure 7</p> <p>The individual member has the ability to set a cue on his account to automatically accumulate physical location history URLs that have contact data or advertisements or other data of the stationary vendor member which the system automatically stores in the individual members account [on a database maintained by at least one processing system] upon an individual member visiting a stationary vendor member business premises.</p>	<p>The device is programmed to automatically make successive entries to an individual member’s log that include the time, place and URL of a business when an individual member physically interacts with a business and at the business’s physical location.</p> <p><i>See, e.g., ’911 patent at 13:58-64, 21:14-16, 21:42-44, 21:47-51, Abstract (lines 1-12), 1:6-12, 3:25-29, 4:14-17, 7:53-62, FIG. 3, 11:16-39; see also ’911 patent at 5:1-7, 6:14-26.</i></p>	<p>The device is configured to allow the user to set the individual member’s device to make successive entries automatically to an individual member’s log that include key data of a business, and time, place, and URL, when an individual member physically interacts with a business and at the business’s physical location.</p>

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<p><u>'911 Patent, Claims 1 and 12</u></p> <p>“[upon] determining a location of the individual member”</p>	<p>Id 15:45-55</p> <p>The system makes use of a positioning system (such as GPS or any other type of positioning systems) which determines the location of an individual member when they enter a business vendor location.</p>	<p>The individual member entering and exchanging key data with the stationary vendor member triggers determining the location of the individual member [device].</p> <p><i>See, e.g.</i>, '911 patent at 13:58-14:4, 13:35-40.</p>	<p>Upon a physical encounter between the individual member and the stationary vendor member and when key data is received or transmitted, the positioning system determines the location of the individual member [device].</p>

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<p><u>'911 Patent, Claims 1 and 12</u></p> <p>“searching, [by the search engine,] the database for URLs of stationary vendor members in the location history”</p>	<p>Id 4:45-50 Id 15:5-20 Id 20:55-65 Id 21:1-10</p> <p>The system assigns a URL to each individual and stationary vendor member that is saved in the database. A mobile user member's location history of visits to businesses is implemented to improve and enhance web search engines though making this data internet searchable by virtue of the chronological list of those business URLs saved to their account's location history.</p>	<p>The search engine searches a database containing the searching individual member's accumulated “physical location histories” entries for URLs of stationary members</p> <p><i>See, e.g.</i>, '911 patent at 21:26-35, 21:14-16, 21:44-46, 4:43-62, 15:25-39, 17:12-23, FIG. 9.</p>	<p>The search engine searches a database containing the searching individual member's accumulated “physical location history” entries for URLs of stationary members.</p>
<p><u>'911 Patent, Claims 1 and 12</u></p> <p>“assigning a priority, by the at least one processing system, in a search result ranking based on an appearance of one of the stationary vendor member”</p>	<p>Id 4:45-50 Id 7:30-40 Id 17:45-55</p> <p>The system improves web search rankings for member businesses based on data points such as frequency, geographic location and time of their appearance in mobile users' physical location histories.</p>	<p>Providing a weighting factor for search result ranking that improves the position for a particular stationary vendor member's URL that appears in the searching individual member's location history.</p> <p><i>See, e.g.</i>, '911 patent at 21:14-16, 21:42-46, 21:50-53, 17:12-23, 18:12-18, 19:61-20:1, FH-000448, FH-001266-67, FH-</p>	<p>The Court adopts Defendant's proposed construction.</p>

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		001309, FH0001314; <i>see also</i> '911 patent at 17:47-56, 18:19-38, 19:28-44.	