IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FUNCTION MEDIA, L.L.C., v. GOOGLE, INC. AND YAHOO!, INC.	Civil Case No. 2:007-CV-279 (CE) JURY TRIAL DEMANDED

DECLARATION OF ROY M. JENEVEIN, PH.D. REGARDING CLAIM CONSTRUCTION

I, Roy M. Jenevein, do hereby state and declare the following:

I. Background

A. I am presently Director of the Digital Media Collaboratory in the Computer Sciences Department at The University of Texas at Austin, where I perform research and analysis of computer systems network and architecture, performance and system modeling involving computer hardware and software. I am also an Endowed Fellow in the ICC Institute, which is also part of the University of Texas. I have been a faculty member in the Computer Sciences Dept., where I graduated 10 Ph.D. and 23 M.S. students, and at the same time, Chief Scientist for the Applied Research Laboratories for the University, where I have worked since 1984. Prior to my employment with The University of Texas, I was a professor at the University of New Orleans (UNO) from 1969 to 1984, and where, along with Dr. Fred Hosch, I started the Computer Sciences Department at UNO in 1975.

B. I hold B.S. and Ph.D. degrees in Chemistry from Louisiana State University at New Orleans in 1964 and 1969 respectively. I am largely self-taught in the field of computer science, as it was part and parcel to the research in my field of formal study. I have also setup and managed networks of computers, web servers, and Internet websites for startup companies and for the University of Texas. I am generally familiar with the state of the art of web server technology and Internet websites in the time period around January 2000. My C.V., attached as Exhibit A, provides a detailed account of my educational and professional background.

1. Along with the more detailed experience listed in my C.V., I note the following experience that is uniquely situated to the technology at issue here. I have performed network modeling and simulation research since 1980. During the period of 1987 through 1995 I, along with Dr. Al Dale, of the Computer Sciences Dept. at the University of Texas at Austin, directed an effort toward the development of hardware based database systems. Since 2005, as Director of the Digital Media Collaboratory, I have provided research direction for rich media efforts for web-based systems.

2. During the time period around 1995 to 2001, I was involved in the development of web techniques via a start-up company called HighPoint Technologies. In 1998, I became Chief Technical Officer of PowerQuest Corp. the developers of "Partition Magic," "Drive Image," "Lost and Found," and many other computer utilities. These utilities are well-recognized file system and network based computer utilities. One of my responsibilities was to ensure that files were transmitted correctly and in a timely fashion at the manufacturing sites of Dell, Compaq, and Hewlett-Packard.

3. After 2000, I was also involved in the implementation of techniques for storage of data from web pages, media creation, and web access at the University of Texas.

C. I have been retained by Google Inc. in this matter. I will be compensated for my time working on this matter at the rate of $275 per hour.

II. Legal Standards

A. I am not an attorney and I will offer no opinions on the law. I am, however, informed on several principles concerning claim construction, which I have used in arriving at my conclusions in this declaration.

B. First, an issued patent is presumed valid.

C. Second, each patent claim is considered separately.

D. Third, all the words in the claims matter, that is they all must be given a meaning.

E. Fourth, when trying to determine what the terms in the claim mean, there is a hierarchy of materials to consider. First, we begin with the words of the claim. Second, we examine the intrinsic record, that is the patent specification and prosecution history. And third, if necessary, we consult extrinsic evidence, such as dictionary definitions and learned treatises.

F. Fifth, patent claims must particularly point out and distinctly claim the subject matter that the patentee regards as his or her invention. If a claim fails this requirement, it is indefinite. Among the reasons a claim may be indefinite is if it does not fairly notify the public of the scope of the patentee's right to exclude. Such a claim or terms in a claim are said to be "not amenable to construction" or "insolubly ambiguous" and thus indefinite under the Patent Law.

G. Sixth, the law permits so-called "means plus function" claims. These are claims that are largely functional and do not have corresponding structure. Such claims typically have the phrase "means for" in them, with the function following the phrase. However, there is a trade off for using such language in the claims, which is a strict requirement that corresponding structure for the claimed "means" or function must be recited in the patent specification. In cases involving computer-implemented inventions, for example, it is not sufficient structure to recite to a general purpose computer or an unspecified algorithm executed by a computer. If this structure requirement is not satisfied, such a claim is also said to be indefinite.

III. Scope of Work

A. I have reviewed U.S. Patent Nos. 6,446,045 (the '045 patent), 7,240,025 (the '025 patent), and 7,249,059 (the '059 patent). I have also reviewed the related prosecution histories and references cited therein. Lastly, I have reviewed the claim construction disclosures exchanged between the parties. Attached as Exhibit B is a copy of the parties' disputed terms.

B. I was requested to consider issues regarding the construction of the claims at issue in this litigation and address the following topics:

1. the level of skill of persons who would have worked in the field in the 1997-2002 time frame;

2. how, if at all, such persons would have understood the meaning and scope of these claims; and

3. if such claims require additional testimony regarding their meaning and scope or if they are indefinite.

IV. Overview of the Patents

A. Two of the patents, the '045 patent and the '025 patent, share a common specification and a priority claim to a January 10, 2000 filing date. The '059 patent, while it also claims priority to the January 10, 2000 filing date, is a continuation-in-part application filed July 11, 2002. New matter was added to the '059 patent with that filing, namely the "third party professional"-related disclosure, which is claimed in the asserted claims and was argued during prosecution of the '059 patent.

B. Broadly speaking, the patents describe a business method for inventory specification, management, and delivery. The specification is characterized by recitations to general purpose computer hardware and software, a glossary of definitions, a list of objects and advantages of the invention, and the extensive use of functional terminology and phrases to characterize the invention and its objects. There is little if any disclosure of particular claimed algorithms, and particularly interface designs, or any examples of specific computer code or programming examples to aid the reader in understanding how to perform, or what the corresponding structure is for the functional language throughout the patents.

C. One thing, however, is clear and that is the distributed and complementary interaction between the various functions, locations, and users that comprise the system. For instance, there is a Central Controller and Presentation Processor at one location (see '045 patent, Fig. 2a), a Central Presentation and Selection Server (see Fig. 2b), a Seller Interface at another location (see, e.g., Figs. 2c and 4a block 11102 and 55:59-67), a media venue interface at yet another location (see, e.g., Fig. 2e and 54:65-67), and a buyer interface at still another location (Fig. 2d). Each location has functions that the user at that location must perform, and significantly, each of the terms is specifically defined in the glossary. See, e.g., "buyer" at '045 patent, 8:32-37, "central controller" at '045 patent, 8:38-40; "media venue" at '045 patent, 10:38-45; "seller" at '045 patent, 11:55-60; and "third party professional" at '059 patent, 15:47-16:15. However, there is little if any structure or acts described in the patents corresponding to these functional elements.

D. During prosecution of the patents, Function Media forcefully and repeatedly argued that there were patentable distinctions between the terms expressly defined in the patent and seemingly minor differences in the prior art applied by the USPTO. These arguments were clearly for purposes of patentability and further color both the expressly defined terms found in the claims and what was meant by these terms. Ascribing meaning to the claims as a person of ordinary skill in the art would have at the time, given the specification, glossary, objects and advantages, and prosecution history of the patents, is a formidable task.

E. As an example, all of the claims of all the patents have a limitation which reads (substantially) "media venues owned or controlled by other than the seller." This limitation

found its way into the claims during prosecution of the '045 patent when the then pending claims were rejected in view of prior art that showed an anticipatory system, but where the disclosure in that system differed, according to Function Media, because it concerned an "Internal Management Model" as opposed to the "Business to Business Model" of the claimed invention. See '045 patent prosecution history, Response dated 1/22/02 at 6. The prior art Mandeberg patent, according to Function Media, differed from what was claimed because Mandeberg concerned creating presentations by an enterprise, such as a restaurant chain, which might have a multiple restaurant sites. Function Media distinguished Mandeberg by arguing that the '045 patent required that the "media venue" be owned or controlled by a distinct entity, other than the seller, an argument based on the express definition of "media venue" and the amended claims, which added the language "media venues owned or controlled by other than the seller." See id. at 6-8. If, according to Function Media's argument regarding Mandeberg, a restaurant had a central franchise office that created menus for all of the franchisees, then the franchisee restaurants would not qualify as media venues own or controlled by other than the seller because the of the relationship between the franchise office and the franchisee.

V. Level of Skill in the Art

A. A person of ordinary skill in the art in the field of the patents-in-suit would have had 3 to 4 years of experience and familiarity with networks, databases, and marketing or advertising, or a couple years of professional experience and an undergraduate degree in Computer Science, Electrical Engineering, Computer Engineering, or an equivalent subject area by January 2000.

VI. Claim Construction Issues

A. Again, I am not a lawyer but have been informed on "definiteness" requirements of patent claims under the Patent Law. The specific requirement I have been asked to address in this declaration is found in 35 U.S.C. § 112, Paragraph 2, and states:

> "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

B. The "means plus function" limitations I have been asked to consider also must satisfy the same statutory requirement of 35 U.S.C. § 112, Paragraph 2 through Paragraph 6 of the same section, which states:

> "An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."

C. Applying the claim construction rules described above, I provide the remarks and analysis below, as viewed by a person of ordinary skill in the art at the time of the alleged invention, regarding terms in the '045 patent:

1. (#7[1]) "***A method of using a network of computers to contract for, facilitate and control the creating and publishing of presentations, by a seller, to a plurality of media venues owned or controlled by other than seller comprising***":

(a) The preamble of claim 1 is a limitation. First, the body of the claim, and particularly the "providing means for transmitting," relies upon the preamble to introduce the "said presentations" found in the body, and if it were not a limitation "said presentations" would be indefinite. Second, Function Media amended the preamble and argued its newly added terms during prosecution, thereby distinguishing its claims over the prior art by arguing, for example, that the term "contract for" patentably distinguished the claim. See '045 patent prosecution history, Response dated 1/22/02 at 8 ("In addition the term 'contract for' that is now found in the amended claim 1 preamble clearly supports a Business to Business model i.e., by definition, contract for, is between two or more parties."). A person of ordinary skill in the art would understand that to "contract for" means that the system must permit contracting between the seller and the media venue.

(b) A second issue in this preamble is the term "control," the second occurrence having been added during prosecution. According to the first instance of the term "control," the seller must "facilitate and control" the "creating and publishing of presentations, by a seller, to a plurality of media venues." To a person of skill in the art, this plainly means what it says, that the seller controls the creating and publishing of presentations on the media venues. The second recitation of control, however, expressly excludes control of the media venue by a seller. There are three ways to interpret this limitation: either (1) the control language is internally inconsistent because the seller must control the creating and publishing of presentations on the media venues, but also cannot control the media venues, which would be contradictory and thus indefinite; (2) it is a further limitation on what it means to be a "seller," in other words, it is excluding from the claim "sellers" that create, facilitate, or publish to media venues that the seller owns or controls; or (3) the second "control" phrase adds further requirements on the media venue, which is that the media venue must ultimately control the publishing of presentations at the media venue's location. The third construction is the most probable to a person of ordinary skill in the art because it is the most consistent with description in the specification of processing of presentations destined for non-resident media venues (see '045 patent, 43:53-67 (describing how the media venue controls the ultimate publication of presentations)) and the prosecution history in the '045 patent. More particularly, when the '045 patent was prosecuted, Function Media argued that there was a difference between an "Internal Management Model" of the prior art and the "Business to Business Model" of its invention. This was because the Mandeberg prior art taught creating digital media presentations "which are

[1] The number(s) in parentheses refers to the number given in Exhibit B for the patent that is identified in this section of my report unless otherwise noted. Because the terms for the '025 and '059 patents were grouped together, I dealt with common terms in the '025 patent section of my report and the unique '059 patent terms in the following section of my report.

developed and stored in a presentation database at the central location" and further because the Mandeberg prior art system was for "generating menu boards [presentations] for an enterprise such as a restaurant chain, which includes a plurality of sites such as restaurant sites." '045 prosecution history, Response dated 1/22/02 at 6-8 (distinguishing the preamble and terms "media venue" and "seller" from the prior art). Continuing, Function Media pointed the examiner to the definition of "media venues" found in Function Media's glossary.

(c) Thus, the preamble is a limitation, and the "control" language at the end of the claim requires the control of ultimate publication of presentations by the media venue.

2. ('045 patent #8 and '025 and '059 patents #5) "***media venue***" and "***internet media venue***":

(a) The parties generally agree to the majority of the definition of these terms, but appear to differ regarding whether the claim requires the "media venue" or "internet media venue" to be a particular location.

(b) In view of the express definition and the specification, a person of ordinary skill in the art would understand that a physical location would be something like a printing press, a billboard, or bus, and a virtual location would be a specific Internet address or domain name of the particular internet media venue.

(c) As I understand the distinction that Function Media is drawing in its construction, its construction is broader because the "location" does not necessarily have to be part of the media venue or internet media venue location. I disagree that a person of ordinary skill in the art would have construed the terms as broadly as Function Media has specified because, under Function Media's proposed construction, then anything could be the "media venue," including a buyer or seller computer. The specification, however, clearly contemplates a definition of media venue that excludes a buyer or a seller (or their computers) as evidenced by the use of the expressly defined terms "seller," "media venue," "buyer," and "third party professional."

3. (#1) "***means for applying corresponding guidelines of the media venues***":

(a) This term is indefinite because there is no corresponding disclosure in the claim or in the specification that explains what the structure or acts are for performing the recited function of applying the guidelines of the media venues. The claim requires that the guidelines are applied to the presentations to be created and published to a plurality of media venues, and that the seller is in control of this process. The definition of "presentations" in the specification broadly states that they may be "text, graphics, audio, multimedia, or any combination of any communication methods." Similarly broad, the "Objects and Advantages" of the specification recites that "[t]he invention automatically applies not only editing, style, graphics, data, and content controls but also design specification and architectural requirements...." '045 patent, 4:67-5:5. There is, however, no disclosure of how any guidelines are actually applied to any presentations, much less entered and interpreted for application. The

specification, does, however, describe that the information in Presentation Rules Database 4650 in Fig. 2c (Seller Interface) and Presentation Rules Database 1650 in Fig. 2a (Central Controller) is continuously synchronized, and that "with the same rules and guidelines as those in the Presentation Rules Database 1650 applied and enforced during data input at the Seller Interface 4000 Fig. 2c module, no modification or editing should be necessary at the Central Controller and Presentation Processor 1000 module. Although the same rules and guidelines are enforced at the Seller Interface 4000 Fig. 2c module as at the Central Controller and Presentation Processor 1000 module, both processes should be utilized to ensure consistency and quality control." '045 patent, 19:9-18. This disclosure, including the corresponding Presentation and Configuration Program 4715 (a purely functional thing) provides insufficient acts or structure to a person of ordinary skill in the art to "apply[] corresponding guidelines of the media venues." There is, for example, no disclosure of how the guidelines are to be applied to graphics, audio, or multimedia presentations—or, for that matter, to skywriters and billboards. In fact, among the guidelines are "design and style" and "look and feel" standards, which are themselves subjective. See, e.g., '045 patent, 5:15-20. The guidelines are not only completely subjective, but it is unclear how they must be specified, and how those specifications are then applied because there are no structure, material, or acts that describe to a person of ordinary skill in the art how any of them are in fact applied.

(b) The structure specified by Function Media in its column of the claim construction chart redefines the function of the claim and is also not supported by the citations to the specification. In column 41, for instance, what is described is not actually "applying" the guidelines, but a real-time interactive prompting of the seller user to force the seller user to conform its input to each of the selected media venues' requirements. See, e.g., '045 patent, 41:21-42, see also 19:9-18. What is described is a subjective mental process under the control and decision making of a human being because that person would have to, for instance, re-write a 3,000 character presentation for an internet directory into a 300 character presentation for a printed magazine. '045 patent, 41:33-42. The figures likewise provide insufficient structure that addresses the claimed function because they have no details of how the guidelines are applied.

(c) A person of ordinary skill in the art would not find what is disclosed in the seller interface (e.g., Presentation and Configuration Program 4715 and Presentation Rules Database 4650), or the central controller (e.g., Presentation Generation Program 1710), or even the combination of the two, to be sufficient structure to support the claimed function because they the recited structures are purely functional black boxes.

4. (#2) "***means for transmitting said presentations to a selected media venue of the media venues***":

(a) This term is indefinite because there is insufficient corresponding disclosure in the specification that explains what the structure or acts are that perform the recited function of "transmitting said presentations to a selected media venue of the media venues." While the specification does recite purely functional terms like Communication and Transport Program 4760 ('045 patent, 41:66-42:14) and certain general purpose telecommunications equipment such as modems, phone lines, and Internet connections, this structure does not fully support the claimed function. This is because general purpose equipment alone does not address

what must happen at the application layer during a data communication session as specified in the claim. The hardware is the lowest layer of data communication transfer, but does not consider the myriad other layers and steps involved in implementing such a data transmission. The recited disclosure does not specify the structure or acts of how the presentations are to be transmitted "to a selected media venue of the media venues" in any layer, nor does it limit the scope of the claim to any particular structure that performs the recited function because what is cited is purely functional and it does not link the claimed function clearly to the corresponding disclosure.

(b) The structure specified by Function Media is not supported by the portions of the specification it cites in its column of the claim construction chart, and once again Function Media rewrites the function of the claim, as it does with nearly all the means limitations, with the beginning phrase "computer software executable on a processor capable of" followed by a redrafted function that differs from the agreed function recited in the claim construction chart. Here, for instance, instead of transmitting a presentation to a selected media venue, the function has been changed to simply transmitting data to an electronic destination. This is at once too broad (simply transmitting) and too narrow (the claims are not limited to electronic destinations). Moreover, such structure, if it were supported, would also be indefinite because it merely recites a computer program (Presentation Generation Program 1710) that might achieve a function, without disclosing the corresponding structure or acts necessary to do so, nor is the recited function linked to the cited disclosure. In fact, Function Media cites the same "Presentation Generation Program" for this element as for the "means for applying" discussed above, which is a purely functional black-box. Function Media's citation to Figure 4g, block 11390, which is similarly purely functional, concerns publication as opposed to transmitting, and refers to what the "central controller and presentation processor" does, as opposed to what the claim requires, which is the seller transmitting the presentation to the selected media venues.

(c) A person of ordinary skill in the art would not find the citations to the Communication and Transport Program, the Presentation Generation Program, or a combination of the two to be sufficient structure or acts to support the claimed function because the recited structures are purely functional black boxes.

5. (#3) "***means for a seller to select the media venues***":

(a) This term is indefinite because there is no corresponding disclosure in the specification that explains what the structure or acts are that perform the agreed function of enabling the seller to select the media venues. While the specification does recite certain general purpose computer equipment that could be used to input information (which is a separate requirement of the claims), it does not provide structure that enables a seller to select the media venues nor does it limit the scope of the claim to any particular structure that performs the function. At a minimum, one would expect at least some form of a user interface description for this particular means, but none is present in the specification. This violates the requirement against citing general purpose computer equipment, because all it does is require that the general purpose equipment is capable of enabling the seller to select the media venues. It does not say how the seller is enabled to select the information, how the selection is performed, or how the information to be selected is presented to the seller, much less used to select the media venue.

(b) The structure specified by Function Media is not supported by the portions of the specification it cites, and once again Function Media rewrites the function of the claim. For instance, the structure identified by Function Media ("computer software executable on a processor capable of presenting electronic forms allowing the selection of media venues, or equivalents") is not even from the specification, and it is purely functional language that does not match the agreed function in the chart. The specification does not describe what precise software or computer enables this software or computer to present these so-called "electronic forms," which "allow the selection of the media venues or equivalents." The recited portions of the specification likewise do not support the structure given by Function Media. Figure 4a is insufficient disclosure because it simply shows functional blocks in a flow chart that specify what information might be entered, as opposed to structure that supports the agreed function of enabling the seller to select the media venues. Finally, I note with regard to this limitation, and the "means for the seller to input information," that Function Media is essentially treating them as having a similar scope in its recitation of structure and function. This creates additional ambiguities between the claim elements including how the structure that purportedly supports either limitation is in any way meaningfully different from the structure that supports the broader position Function Media takes with regard to the limitation that follows. If anything, it shows that the structural support for this limitation is insufficient.

(c) In view of the above, a person of ordinary skill in the art would find the structure insufficient to support the claimed function, regardless of whether it is the structure cited by Defendants, Function Media, or a combination of the two, because the recited structures are purely functional black boxes.

6. (#4) "***means for the seller to input information; whereby the seller may select one or more of the media venues, create a presentation that complies with said guidelines of the media venues selected, and transmit the presentation to the selected media venues for publication***":

(a) As an initial matter, the two sides differ as to whether the underlined whereby clause should be part of the construction or not. Reading the claim as a person of ordinary skill in the art at the time of the invention, it is my conclusion that such a person would, as I do, assume that the whereby clause limits the means for inputting, because inputting includes selection of media venues, creation of presentations, and lastly what is to be done with the input information. I understand that Function Media believes that the semicolon mandates separation of the whereby clause from the rest of the claim. I disagree because the claim recites specifically lettered limitations (a) through (e) and between limitations (d) and (e) there is an "and," a person of ordinary skill in the art would have understood that the whereby clause was a part of limitation (e). I believe, however, that regardless of the presence of the semicolon a person of ordinary skill in the art would conclude that the whereby clause, whether solely a part of limitation (e) or a part of the claim as a whole, modifies at least the "means for the seller to input information" if not all of the limitations in the claim. Regarding the means itself, this term is indefinite because there is no corresponding disclosure in the specification that explains what the structure or acts are that perform any party's identified function. First, with respect to Function Media's identified function, it is essentially the same as it was for the previous limitation of a "means for a seller to select the media venues."

(b) The structure identified by Function Media rewrites the function in a way that further illustrates that Function Media is attempting to support the function with a general purpose computer or software. As is noted above, Function Media refers to "computer software executable on a processor capable of" followed by additional language narrowing the function. This does not convey with any sort of reasonable clarity to a person of ordinary skill in the art at the time what the corresponding structure or acts are that were to achieve or perform the recited function. As for the particular citations to the specification, they are again unrelated to the claimed means and do not specify to a person of ordinary skill in the art what the corresponding structure or acts were contemplated for performing the function. There is not a single example in the specification of how, for instance, this so called "computer software executable on a processor" is supposed to implement the "electronic forms" identified as part of Function Media's structure. For the same reasons why Function Media's identified structure is insufficient for the recited function, the recited function by Google and Yahoo! is unsupported by sufficient structure in the specification. This is because the specification does not disclose how or with what structure: (1) a seller may select one or more of the media venues; (2) a presentation is created that complies with the media venues; or (3) the presentation is transmitted to the selected media venue. Function Media offers a construction of the whereby clause separately, which I have already included in my statements about the phrase as a whole. However, I note that Function Media's construction does not follow the language of the claim. Particularly, Function Media has inserted a requirement that "the computer program" (it is unclear which one) perform the steps of creating and possibly transmitting, despite the claim language which states the seller creates and transmits. Lastly, the whereby clause in this claim refers to "a presentation" despite the fact that "a presentation" was introduced in the preamble and later relied upon in intervening steps in the body (step (c)), so the same term is introduced twice and it is unclear whether the presentation referred to in the whereby clause is the same presentation discussed in the preamble and body or a separate presentation for the whereby clause.

(c) In view of the above, a person of ordinary skill in the art would not find the recited "structure" by Function Media, or Defendants, or a combination of the two to be sufficient structure to support the claimed function because the recited structures are purely functional black boxes.

D. Applying the claim construction rules described above, I provide the remarks and analysis below, as viewed by a person of ordinary skill in the art at the time of the alleged invention, regarding terms in the '025 patent:

1. (#2) "***A computer system for creating and publishing customized electronic advertisements, for a seller, to internet media venues owned or controlled by other than the seller, comprising***" and "***A method of using a computer system for creating and publishing customized electronic advertisements for a seller, to internet media venues owned or controlled by other than the seller, comprising***":

(a) The preamble is a limitation. First, the body of the claim relies on the preamble to introduce the terms "the computer system" and "the internet media venue," which are referred to repeatedly in the body, and if it were not a limitation these terms would be

indefinite. Second, Function Media amended the preamble and argued the language "owned or controlled by other than the seller" during prosecution of the '045 patent to distinguish its invention over the prior art. See '045 patent prosecution history, Response dated 1/22/02 at 8.

(b) Thus, the "owned or controlled by other than the seller" language in this claim should be construed similarly with the same language found in the '045 patent to appropriately limit the claim.

2. (#2) "***A computer system for creating and publishing customized electronic advertisements, for a seller, to internet media venues owned or controlled by other than the seller, comprising***":

(a) Claim 1 of the '025 patent is styled as an apparatus claim, but the body of the claim is defined as a method of using that apparatus. The first interface is defined by activity of the internet media venue using the first interface. The second interface is defined by activity of a seller using the second interface. And the two databases are defined in terms of the use of the first and second interfaces by the internet media venue and the seller, respectively. Given this language, it is unclear whether infringement of claim 1 occurs when a system is created that allows the users to input the information, or whether infringement occurs when the users actually use the interfaces to input the information. As such, it does not fairly inform persons of ordinary skill in the art of its scope.

(b) Thus, claim 1 and the similarly structured claims that depend from it and follow this same format of a method of using the apparatus (see, e.g., 6, 11, 15, 16, 17, 20, 23, 28, 29, 30, 31, 36, 45, 46, 47, 62, 63, 79, 90, 91, 140, 141 and 148) are indefinite for this additional reason.

3. (#12) "***design or style standards***":

(a) While this particular phrase occurs in numerous dependent claims, it does not seem to occur anywhere else in the original specification. Given that this combination of terms is a type of "presentation rule," it is both subjective and functional and has no ordinary meaning. To the extent it can be understood, it is again still functional and it is not clear how a design or style standard is to be specified, interpreted, or applied because the specification does not elaborate on these issues in a manner in which a person of skill in the art would readily appreciate the type of structure or acts necessary to carry out the claim.

(b) Regarding Function Media's definition, it is meaningless because it has defined the phrase with the terms "look and feel," which occur elsewhere in claims with the "design or style standards" language. Different terms in the same claim have different meanings, but Function Media's construction adds to the confusion regarding the meaning of this claim limitation by adding more functional language that is redundant with other terms in the same claims, making the limitation superfluous.

(c) Thus, under either construction the phrase is indefinite.

4. (#13) "***control look and feel of the advertisements***":

(a) While this particular phrase occurs in numerous dependent claims, it does not seem to occur anywhere else in the original specification. A similar, and modestly less subjective term "look and content" is found in the glossary of the specification, though even there this different term is totally functional and the specification contains no meaningful description of how or with what structure this function is to be achieved. Given that this combination of terms is a type of "presentation rule," it is both subjective and functional and has no ordinary meaning to a person of ordinary skill in the art. Nevertheless, to the extent it can be understood, it is still functional, and it is not clear how the "look and feel" is to be specified, interpreted, and controlled. Implementing such a system is non-trivial, even if these requirements were specified (which they are not). In fact, apart from how such a system might in fact be implemented (which is completely absent in the specification), other software companies such as Microsoft and Apple, have entire reference libraries and user guides with detailed instructions on how to use their systems in a manner consistent with their desired "look and feel." Not only is this sort of detail missing from the specification, but there is also no detail at all—other than subjective, manual human thought—that specifies how this requirement is to be implemented.

(b) Regarding Function Media's definition, it is meaningless because it has defined the phrase as "controlling the appearance of an advertisements," which does not meaningfully differentiate the term "presentation rule," and a person of ordinary skill in the art would not have understood there was a meaningful difference between the two terms.

(c) In view the above remarks, this phrase is indefinite.

5. (#14) "***computer program design filter***":

(a) This particular phrase occurs nowhere but the claims. Even the word "filter" is completely absent from the original specification. To a person of ordinary skill in the art, this phrase conveys no structure or steps, but rather it is a purely functional limitation that conveys a result and has no corresponding structure in the specification.

(b) Function Media's definition for this phrase recites it as "software that processes design or style standards." To support this functional limitation, Function Media cites the Abstract and other portions of the specification that in no way links the "computer program design filter" to the general purpose "software" definition by Function Media. A person of ordinary skill in the art would not have understood that any of this citation to unrelated disclosure would have anything to do with the phrase "computer program design filter" or the function associated with it. In fact, the specification is even missing a purely function black box to perform this function.

(c) Thus, this phrase is also indefinite.

6. (#15) "***automatically applying or compare/ing the internet media venue design or style standards to the information input by the seller or the advertisement***":

(a) Among the issues with this phrase are three alternative conjunctions that multiply the phrase into a form that is unclear to a person of ordinary skill in

the art what exactly is meant by the phrase. The system must apply "or" compare, design "or" style standards of an unspecified internet media venue to information input by the seller "or" the advertisement. It is unclear whether the conjunctions are meant to rephrase the first paired term, insert a decision step, or provide alternative combinations that would somehow satisfy the claims. The terms "apply" and "compare" are completely different functions, and the use of the term "compare" leaves the limitation dangling—a comparison is made with no useful result that is handled elsewhere in the claim. Moreover, the last "or" is particularly problematic because it could mean there is "information input by" the seller or the advertisement, or it could mean that the "design or style standards" are "applied or compared" with information "input by the seller" or the "advertisement." What information was input by the advertisement and how, or whether, instead, a created advertisements is somehow applied or compared with the internet media venue design or style standards after it was generated, is unclear. In any event, the specification does not disclose sufficient structure or acts to perform the recited functions of this claim, regardless of their combination.

(b) Regarding Function Media's construction, it is also purely functional and disregards the term "automatically," which conveys to a person of ordinary skill in the art that the step is performed immediately after some earlier condition is satisfied without further user interaction. This is consistent with the use of the term in the specification too, which indicates an immediacy of action once the information is received to ensure the coordination of inventory and resources. See, e.g., '025 patent, 5:28-34; 58:36-42; 59:34-44; 60:10-13; 61:63-62:1. See also, Figs. 4a-4b, blocks 11140, 11142, and 11150, which show the immediate application of the media venue guidelines to the seller's information so the seller can approve any additional charges for the presentation while the seller's information is being input.

(c) Furthermore, Function Media's functional description has no support in the specification regarding how exactly its recited result is achieved.

(d) Thus, under either construction, to a person of ordinary skill in the art at the time, this phrase is indefinite because it is unclear what is meant by or excluded by the limitation.

7. (#16) "***automatically apply/ing or compare/ing the internet media venue distribution factors to the information input by the seller or the advertisement***":

(a) The language of this phrase essentially mirrors that of the previous phrase (#15) with the exception of the replacement of the "design or style standards" with "distribution factors." My analysis and conclusions are essentially the same, namely that the multiple alternative conjunctions, the last conjunction referring to the "seller or the advertisement," and the lack of structure or acts for these functional limitations in the specification render the claim indefinite to a person of ordinary skill in the art.

8. (#17 and #29) "***automatically applying or comparing the internet media venue presentation rules to the information input by the seller or the advertisement***":

(a) The language of this phrase essentially mirrors that of the previous phrases (#15) and (#16) with the exception of the replacement of the "design or style standards" with "internet venue presentation rules." My analysis and conclusions are essentially the same, namely, that the multiple alternative conjunctions, the last conjunction referring to the "seller or the advertisement," and the lack of structure or acts for these functional limitations in the specification render the claim indefinite to a person of ordinary skill in the art.

9. (#18) "***distribution factors***":

(a) This term is uniquely found in the claims. I agree with the construction offered by Google and Yahoo, particularly because it is true to the plain language of the claim and furthermore follows the language right out of the Summary of the invention at 3:19-28, which implies that it pertains to routing information.

(b) The construction offered by Function Media does not convey to a person of ordinary skill in the art how "distribution factors" differ, if at all, from other claim terms, such as selection of internet media venues. It is purely functional. Moreover, the cited portion of the specification does not even refer to "distribution factors." In fact, Function Media's construction is so broad it would render the phrase indefinite because it does not distinguish the phrase from Function Media's construction of "presentation rules," which are also used "in creating advertisements for publishing on that media venue," or much less it does not even convey what the plain ordinary meaning of the claims should be.

10. (#19) "***computer program distribution filter***":

(a) This particular phrase occurs nowhere but the claims. Even the word "filter" is completely absent from the original specification. To a person of ordinary skill in the art, this phrase conveys no structure or steps, but rather a result that has no corresponding structure in the specification.

(b) Function Media's definition for this phrase recites it as "software that processes distribution factors." To support this purely functional limitation, Function Media cites the Abstract and other portions of the specification that in no way link the so-called "computer program distribution filter" to the purely functional "software" definition crafted by Function Media. A person of ordinary skill in the art would not have understood that any of this citation to unrelated disclosure would have anything to do with the unique and undefined phrase "computer program distribution filter." In fact, the specification is even missing a purely function black box to perform this function.

(c) In view of the above remarks on either construction, this phrase is indefinite.

11. (#24) "***advertisement generation program***":

(a) This particular phrase occurs nowhere but the claims. To a person of ordinary skill in the art, this phrase is a purely functional limitation that conveys no structure or steps, but a function or result that has no corresponding structure in the specification.

(b) Function Media's definition for this phrase recites it as "software that displays an electronic advertisement." To support its definition, Function Media cites the Abstract and other portions of the specification that in no way link the so-called "advertisement generation program" to the functional and vague "software" definition by Function Media to the result it is to achieve. Furthermore, Function Media's definition has changed the requirement of "generation" to "displays," which would have been understood differently in view of the specification and claims. One of ordinary skill in the art would understand that to display something is to show it, but to generate something is to make it. These functions are not equivalent. A person of ordinary skill in the art would not have understood that any of this citation to unrelated disclosure would have anything to do with this unique phrase.

(c) In view of the above remarks, this phrase is indefinite.

12. (#25) "***processing … the electronic advertisement in compliance with the presentation rules of the internet media venue***":

(a) To understand this limitation it is important to consider the limitation in the context of the limitations that precede it. First, the user of the second interface (the seller) must be "prompted by the second interface to input information to select one or more of the media venues." If the user must "select" media venues, then there are obviously multiple venues to select from, which is consistent with what the preamble states. Second, the seller must then be prompted by the second interface "for information to create an electronic advertisement for publication" to all of the "selected internet media venues." So, the user inputs information to create <u>one</u> electronic advertisement for multiple "internet media venues." Third, the "processing … the electronic advertisement in compliance with the presentation rules" means that <u>the (one) electronic advertisement</u> (as opposed to input "information") must be processed in a manner specified by the presentation rules. The claim does not expressly specify whether the presentation rules correspond to an "internet media venue" or the "selected internet media venue," but it is logical to assume the latter since that seems to be the point of the only detailed embodiment disclosed in the specification—that the seller is prompted to manually input information in accordance with the presentation rules of the media venues it selected. See, e.g., '025 patent, 42:7-37.

(b) The claim limitation uses the singular "internet media venue" as opposed to the plural form, and does so twice. In this context, it is unclear which "internet media venue" presentation rules the electronic advertisement must be processed in compliance with. Moreover, this functional limitation conveys no structure, only a result, and has no support in the written description (whether considered as a singular or plural term). Thus, this limitation is indefinite.

(c) Function Media's proposed construction addresses the issue with the express language of the claim by rewriting the claim language. As with several other limitations, Function Media has included the purely functional phrase "executing a system sequence of mathematical and/or logical operations." There is no disclosure in the patents of this so-called "sequence of mathematical and/or logical operations." Attached to Function Media's language is a result, which, according to Function Media is "to create an electronic advertisement customized for each selected internet media venue in a form that complies with the presentation

rules set by that media venue." The claim language, however, says nothing about a "form" or "customized." Nor does the specification for that matter. To actually mean what Function Media asserts it means, instead of the claim reciting "processing … the electronic advertisement" the singular electronic advertisement would have to be written anew as "the information input by the Seller." And instead of the claim reciting the phrase "in compliance with the presentation rules of the internet media venue" the singular internet media venue would have to be rewritten as "in compliance with the presentation rules of each of the selected internet media venues." Finally, the claim would have to refer to multiple electronic advertisements being published, each to its appropriate media venue. Not only does this rewrite the claim by (1) substituting terms entirely ("input information" and "electronic advertisement") and (2) changing the singular "electronic advertisement" and "internet media venue" into plural terms, it also rewrites the claim in a functional way that does not have sufficient structural support in the specification. Thus, this limitation is indefinite under Function Media's construction as well.

13. (#26) "***publishing the electronic advertisement to one or more of the selected internet media venues***":

(a) This phrase is also unique in the patents because of the express definition of the term "publishing," which is defined a the specific acts of "placing or making available." With this express definition, and considering the subject phrase, a person of ordinary skill in the art at the time of the invention would have understood that "publishing … to one or more of the selected internet media venues" means "placing the advertisement at the one or more selected internet media venue locations for public display."

(b) The construction offered by Function Media is ambiguous because the alternative language "place or making available" and the phrase "within the framework of the media venue" leave the claim open-ended and essentially undefined; it is unclear whether the advertisements must in fact be published (as opposed to merely transmitted, for instance) at the internet media venue location.

E. Applying the claim construction rules described above, I provide the remarks and analysis below, as viewed by a person of ordinary skill in the art at the time of the alleged invention, regarding terms in the '059 patent:

1. (#3) "***A computer system allowing a third party professional to manage, create and publish customized electronic advertisements, for a seller, to internet media venues owned or controlled by other than the seller and other than the third party professional, comprising***" and "***A method of using a computer system allowing a third party professional to manage, create, and publish customized electronic advertisements, for a seller, to internet media venues owned or controlled by other than the seller and other than the third party professional, comprising***":

(a) The preamble is a limitation. First, the body of the claim relies upon the preamble to introduce "the computer system" and "the internet media venues." If the preamble were not a limitation these terms would be indefinite. Second, Function Media added the language "owned or controlled by other than the seller" during prosecution of the '045 patent

to distinguish the claims over the prior art and further altered in the '059 patent in view of the "third party professional" language added to that specification when the '059 patent was filed.

(b) A second issue in this preamble is the term "control," which was added during prosecution of the '045 patent. For the third party professional to "manage, create, and publish" to internet media venues is a form of control. The preamble, however, precludes control by the third party professional (and the seller). There are three ways to interpret the "control" limitation: (1) either the control language is internally inconsistent because the third party professional must control for a seller the management, creating, and publishing of electronic advertisements on the media venues, but also cannot control the media venues, which would be indefinite; (2) it is a further limitation on what it means to be a "seller" or a "third party professional" or both, in other words it is excluding from the claim "sellers" and "third party professionals" that manage, create, or publish to media venues that the seller or third party professional owns or controls; or (3) the "control" phrase adds further requirements on the media venue, which is that the media venue must ultimately control the publishing of electronic advertisements at its location. The third construction is the most probable and likely construction to a person of ordinary skill in the art because it is the most consistent with limited description in the specification of the processing of presentations destined for non-resident media venues (see '045 patent, 43:53-67 (describing how the media venue controls the ultimate publication of presentations)) and the prosecution history in the '045 patent. More particularly, when the '045 patent was prosecuted, Function Media argued that there was a difference between an "Internal Management Model" of the prior art and the "Business to Business Model" of its invention. This was because the Mandeberg prior art taught creating digital media presentations "which are developed and stored in a presentation database at the central location" and further because the Mandeberg prior art system was for "generating menu boards [presentations] for an enterprise such as a restaurant chain, which includes a plurality of sites such as restaurant sites." '045 prosecution history, Response dated 1/22/02 at 6-8 (distinguishing the preamble and terms "media venue" and "seller" from the prior art). Continuing, Function Media pointed the examiner to the definition of "media venues" found in Function Media's glossary.

(c) Thus, the "owned or controlled by other than the seller and other than the third party professional" language in this claim should be construed similarly with the same language found in the '045 patent to appropriately limit the claim.

2. (#3) "***A computer system allowing a third party professional to manage, create and publish customized electronic advertisements for a seller, to internet media venues owned or controlled by other than the seller and other than the third party professional, comprising***":

(a) Claim 1 of the '059 patent is styled as an apparatus claim, but the body of the claim is defined as a method of using that apparatus. The first interface is defined by activity of the internet media venue using the first interface. The second interface is defined by activity of a seller using the second interface. The third interface is defined by activity of a third party professional using the third interface. And the three databases are defined in terms of the use of the first, second, and third interfaces by the internet media venue, the seller, and the third party professional, respectively. Given this language, it is unclear whether infringement of claim

1 occurs when a system is created that allows the users to input the information, or whether infringement occurs when the users actually use the interfaces to input the information. As such, it does not fairly inform persons of ordinary skill in the art of its scope.

(b) Thus, this claim and the similarly structured dependent claims that follow this same format (see, e.g., 14 and 25) are indefinite for this additional reason.

Sworn this 27th day of February, 2009, Austin, Texas, by _____
Roy M. Jenevein, Ph.D.

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Sworn this 27th day of February, 2009, Austin, Texas, by _____
Roy M. Jenevein, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that the DECLARATION OF ROY M. JENEVEIN, PH.D. REGARDING CLAIM CONSTRUCTION was served as agreed between the parties on counsel of record for Function Media, L.L.C. and Yahoo!, Inc. by electronic mail on February 27, 2009.

/s/ Jason W. Wolff

EXHIBIT A

Roy M. Jenevein, Ph.D.

PROFESSIONAL VITA

(February 26, 2009)

NAME: Roy M. Jenevein, Jr.
DATE OF BIRTH: 10/28/1942
ADDRESS: 123 Appaloosa Run, Liberty Hill, Texas 78642

EDUCATION:

BS - Chemistry, May 1964, Louisiana State University in New Orleans

Ph.D. - Chemistry, May 1969, Louisiana State University in New Orleans

EXPERIENCE:

Director, Digital Media Collaboratory, The University of Texas at Austin, 6/2005 – present.

Assistant Director, Center for Agile Technology, The University of Texas at Austin, 9/12/2001 – 5/30/2003

Chief Technology Officer, PowerQuest Corporation, Orem Utah, Oct. 1998 – Dec. 1999, Chief Scientist, PowerQuest Corp. Jan 2000 – July 2001

Consultant to Somerset Design Center (Motorola, IBM and Apple PowerPC Design Consortium), Austin TX, 1995 - present

Co-Founder and Chief Technology Officer, Highpoint Technologies, Inc., Austin TX, May 1995 – Oct 1998

Chief Scientist, Information Technology Group, UT Applied Research Laboratories, and faculty, Computer Sciences, University of Texas at Austin, 9/86 – 10/98 (zero time appt., Univ. of Texas at Austin, 11/01/1998 – 9/12/2001)

Visiting Associate Professor, Department of Electrical and Computer Engineering, University of Texas at Austin, 8/1980 - 8/1981 and 6/1984 - 9/1986

Acting Chairman, Department of Computer Science, University of New Orleans, 8/1981 - 5/1982

Director, Computer Research Center, and Associate Professor of Computer Science, University of New Orleans, 8/1973 - 9/1984

Associate Director, Computer Research Center, and Assistant Professor of Computer Science, University of New Orleans, 7/1971 - 7/1973

Research Associate and Assistant Professor of Computer Science, University of New Orleans, 6/1969 - 7/1971

PROFESSIONAL ACTIVITIES:

General Chair of the 1999 HPPC (High Performance Parallel Computing) Symposium, Dec. 2, 1999

General Chair, IEEE Intl. Performance, Computing and Communications Conference (IPCCC), 1998

Co-Founder, Highpoint Technologies, Inc and on Board of Directors, 1989 – 1998,

Chairman, Program Committee, IPCCC, 1997

Technical Advisor to Instanton Corp, 1997 – 2004.

Chairman, Tutorial Committee, IEEE Intl. Phoenix Conference on Computers and Communications, 1996

Chairman, Central Texas Chapter, IEEE Computer Society, 1987 - 88

Chairman, New Orleans Chapter, IEEE Computer Society, 1976 - 77

Consultant to city, state and federal governments as well as the private sector. This has included: The U.S. Army, U.S. Navy, and Department of Defense; Motorola Inc., IBM, Apple Computer, Somerset Design Center, PowerQuest Corp., Terrasoft Solutions, Recognition Inc., Advanced Micro Devices Corp., Chrysler Corp., Digital Equipment Corp., Zenith Data Systems, Scientific Engineering Software Inc., various departments of federal, state and city governments.

GRANTS AND CONTRACTS (Total: $10,684,933):

Texas Work Force Commission (through TBEC) Development of rich media techniques called GTTX, **$900,000**, (9/2006 – 12/2008)

U.S. Army - TRADOC, "AMEDD ANOC/BNOC Digital Training System", ICC and IAT, UT Austin, **$1,157,000**, (7/01/05 – 8/28/06)

U.S. Army - RDECOM, "Digital Warrior Prototype", ICC and IAT, UT Austin, **$300,000**, (5/14/05 – 10/31/05)

ONR - "High Performance Computing". With Tom Lawrence, Applied Research Laboratory, UT Austin. **$100,000,** (6/2001 – 12/2001)

Texas Advanced Research Program - "Packet Switch Design for Real-Time Delivery of Multimedia", with Simon Lam, Computer Sciences, UT Austin, **$154,617**, (1/96 - 12/97)

IR&D Funds(ARL/UT) - "Orion: An Omnidirectional Optical Interconnection Technology", **$467,500**, (6/1993-11/1998)

SPAWARS (U.S.Navy) - "Applications of the Orion Optical Interconnection Technology to parallel computer system interconnection problems", ARL/UT, **$350,432**, (9/1991 – 12/1995)

IBM Corporation - "A Uniform Approach to the Modeling of Message Passing and Shared Memory-based Cluster Architectures", with J. C. Browne, Computer Sciences, UT Austin, **$93,384**, (11/1992 - 12/1994)

IR&D Funds (ARL/UT) - "A 3D-Cube Based Parallel Architecture", with Granville Ott, **$75,000**, March, (3/1994 - 2/1995)

U.S. Army - Funding for modeling and analysis of MAFIS(Mobile Automated Field Instrumentation System), a distributed computer system providing for an operational test environment of a battlefield exercise. With Arnold Tucker and David Brant of Applied Research Labs, University of Texas at Austin. **$783,000**(1/6/88 - 3/1/89)

U.S. Army - Funding for modeling and preliminary architecture of a networked computer system to meet the operational test requirements of AFATDS (Advanced Field Artillery Tactical Data System). With Arnold Tucker and David Brant of Applied Research Labs, University of Texas at Austin. **$834,000**(12/1/87 - 12/31/91)

Shell Foundation – Development of the first prototype of the **Kyklos Database Machine**. Studies have shown that it will perform 35 times that of a comparably configured Teradata database machine. The base system consists of an Ametek 2010 Parallel computer system (a 24 processor 25Mhz MC68020 plus 8 independent 300 MB disks). With Al Dale, Computer Sciences, University of Texas at Austin. **$181,000** (8/88 - 12/89)

Office of Naval Research - University Research Initiative on Formulation and Programming of Parallel and Distributed Computation Structures. One of twelve initial investigators in Computer Sciences, UT Austin to undertake a comprehensive effort of integrating the concepts of parallel programming from theory to architecture. **$5,400,000**(10/86 - 12/88)

Office of Naval Research - Funding for the design and modeling of the METRIC parallel computer architecture. The heart of the METRIC computer system is a hardware scheduled multi-threaded CPU execution environment, With Donald Fussell, Computer Sciences, University of Texas at Austin. **$280,000**(7/86 - 7/88)

Office of Naval Research - Funding for the initial phase of design of algorithms and architecture for a high performance external memory sub-system to be utilized by parallel computer systems. The feasibility of developing it into a database machine will be evaluated. With J.C. Browne and A.G. Dale, Computer Sciences, University of Texas at Austin. **$200,000**(7/86 - 6/88)

Department of Defense - University Research Instrumentation Program, for implementation of a commercially engineered prototype of the Texas Reconfigurable Array Computer (TRAC). With J. C. Browne, Computer Sciences, and G. J. Lipovski, Electrical and Computer Engineering, University of Texas at Austin. **$150,000** (9/83 - 9/84)

Heathkit (through New Orleans General Data Services - NOGDS) for design and manufacture of the HA-8-2 Music Synthesis (HA-8-2) and Color Graphics (HA-8-3) systems, **$142,000** (10/79 - 6/82)

ERDA through Chrysler Corporation, Real-Time Data Acquisition System for Controlling and Monitoring Vital Parameters of an Electric Car during Testing (through NOGDS), **$17,000** (1978-80)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS:

Association for Computing Machinery - ACM
IEEE, IEEE Computer Society,
Twice IEEE Computer Society Section Chair, New Orleans Section, and Central Texas Section
DMTF - DeskTop Management Task Force

REFEREED PUBLICATIONS (Computer Science & Engineering):

(with D. DeGroot and G. J. Lipovski) "A Hardware Mechanism for Scheduling Resources in a Parallel Machine Environment," ***Proceedings of the 8th Annual Symposium on Computer Architecture***, pp. 57-65, May 1981.

(with J. C. Browne) "A Control Processor for a Reconfigurable Array Computer," ***Proceedings of the 9th Annual Symposium on Computer Architecture***, pp. 81-89, April 1982.

(with Rathi, B. D., Deshpande, S., Sejnowski, M., Walker, D., Lipovski, G. J. and Browne, J. C.) "Specification and Implementation of an Integrated Packet Communication Facility for an Array Computer," ***Proceedings of the 12th International Conference on Parallel Processing***, pp. 51-58, Aug. 1983.

(with J. Feo and J. C. Browne) "Dynamic, Distributed Resource Configuration on SW-Banyans," ***Proceedings of the 12th International Symposium on Computer Architecture***, June 1985.

(with S. R. Despande and G. J. Lipovski) "TRAC: An Experience with a Novel Architectural Prototype," *AFIPS,* ***Proceedings of the National Computer Conference***, Vol. 54, July 1985.

(with J. C. Browne, A. G. Dale, and C. Leung) "A Parallel Multistage I/O Architecture with Self-Managing Disk Cache for Database Management Applications," ***Proceedings of the Fourth International Workshop on Database Machines***, pp. 330-345, March 1985.

(with B. L. Menezes) "KYKLOS, a Linear Growth Fault-Tolerant Interconnection Network," ***Proceedings of the 14th International Conference on Parallel Processing***, pp. 498-502, August 1985.

(with B. L. Menezes) "KYKLOS: Low Tide, High Flow," ***Proceedings of the 6th International Conference on Distributed Computing Systems,*** pp. 8-15, May 1986

(with B. L. Menezes and M. Malek) "Reliability Analysis of the KYKLOS

Interconnection Networks," ***Proceedings of the 6th International Conference on Distributed Computing Systems,*** pp. 46-51, May, 1986

(with S. R. Despande) "Scaleability of a Binary Tree on a Hypercube," ***Proceedings of the 15th International Conference on Parallel Processing***, pp 661-668, Aug. 1986.

(with J. deMelo) "SK-Banyans: A Unified Class of Banyan Networks," ***Proceedings of the 15th International Conference on Parallel Processing***, pp 100-107, Aug. 1986.

(with B. L. Menezes) "Managing Combinatorial Explosions in a Family of Interconnection Networks,"***International Computer Symposium***, December, 1986

(with B. L. Menezes, D. Brant, D. Loewi and A. G. Dale) "An Interconnection Network Supporting Relational Join Operations,"***Proceedings of the 7 th International Conference on Distributed Computing Systems,*** pp. 128-135, September, 1987.

(with B. Menezes, K. Thadani, A. G. Dale) "Design of a HyperKYKLOS Based Multiprocessor Architecture for High Performance Join Operations," ***Proceedings of the Fifth International Workshop on Database Machines***, October, 1987.

(with T. Mookken) "Traffic Analysis of Rectangular SW-Banyan Networks," ***15 th International Symposium on Computer Architecture,*** May, 1988.

(with D.Kim, G. Lipovski, and A. Hartmann) "Regular CC-banyan Networks," ***15 th International Symposium on Computer Architecture,*** May, 1988.

(with B. Menezes) "The KYKLOS Multicomputer Network: Interconnection Strategies, Properties, and Applications," ***IEEE Trans. Comput.***., vol. C-40, no. 6, pp 693-705, June 1991.

(with D Fussell and W. W. Park) "Performance Advantages of Multithreaded Processors," ***Proceedings of the 1991 International Conf. on Parallel Processing***, pp ,Aug 1991.

(with M. Malek and L. Laranjeira) "On Tolerating Faults Using Naturally Redundant Algorithms," ***Proceedings of the 10th Symposium on Reliable Distributed Systems***, Sept. 1991.

(with J. Campbell), "A Wafer Scale Optical Bus Interconnection Prototype", ***1992 International Conference on Wafer Scale Integration***, pp 182-191, Jan 1992.

(With Laranjeira and Malek) "Space/Time Overhead Analysis and Experiments with Techniques for Fault Tolerance," ***Proceedings of the 3rd IFIP International Working Conference on Dependable Computing for Critical Applications***, Springer-Verlag, pp 175-184, September 1992.

(with B. Menezes, A. Johnson, M. Malek and K. Yau), "Fault Impact and Fault Tolerance in Multiprocessor Interconnection Networks," ***Journal of Quality and Reliability Engineering***, Vol. 8, pp 485-500, October 1992.

(with Bunda, Fussell and Athas), "16-Bit vs. 32-Bit Instructions for Pipelined Microprocessors," ***Proceedings of the 20th Annual International Symposium on***

Computer Architecture, pp 237-246, May 1993.

(with Buddhikot and Womack) "Modeling and Quantitative Performance Evaluation of Distributed Locking and Barrier Synchronization Protocols and an Interprocessor Communication Mechanism," ***Proceedings of the 1993 UK Performance Engineering Workshop***, June 1993.

(With Buddhikot and Womack) "Quantative Performance Evaluation of a Locking Protocol and Message Cache Mechanism," ***Proceedings of the European Simulation Symposium***, Delft, Netherlands, p483-489, Oct. 1993.

(with L. Laranjeira and M. Malek), "NEST: A Nested Predicate Scheme for Fault Tolerance", ***IEEE Trans. Comput.***., vol. C-42, no. 11, pp 1303-1324, Nov. 1993

(with N.Ullah), "metriX: A Precise Methodology for Computer System Performance Measurement", ***Proceedings of the 1993 International Conference for Computer Applications in Industry and Engineering***, pp 205-211, Dec. 1993.

(With Buddhikot and Womack) "On the Design and Proof of Correctness of a Barrier Synchronization Protocol," ***Proceedings of the International Conference on Parallel and Distributed Computer Systems***, (PDCS), Oct. 1994.

(With Buddhikot and Womack) "Architectural Support for Fast Communication and Synchronization," ***January Special Issue of IEEE Technical Committee on Computer Architecture (TCCA)***, Jan. 1995.

(With N. Ullah) "metriX: An Approach for Characterizing the Performance Potential of System Architectures", ***Proceedings of the 1995 International Phoenix Conference on Computers and Communications***, pp 704-712, March 1995

(With S. Shahrier) "A Distributed Access Generic Optical Network Interface for SMDS Networks", ***Proceedings of the 1997 IEEE International Performance, Computing, and Communications Conference***, pp 493-501, Feb. 1997.

(With S. Shahrier) "A Performance Comparison of SMDS and Frame Relay Protocols at the DRAGON User-to-Network Interface", **SUPERCOMM**, 1997

(With S. Shahrier) "SDL Specification and Verification of a Distributed Access Generic Optical Network Interface for SMDS Networks", **GLOBCOMM**, Nov. 1997

(With N. Ullah, M.D.Brown) "Memory Access Pattern Analysis", ***First Workshop on Workload Characterization***, (WWC '98), November 1998.

REFEREED PUBLICATIONS (Chemistry):

(with Stocker,J.H., Kern,D.H.) "The Ratios of Diastereomeric Pinacols Formed in the Ultraviolet-Promoted Bimolecular Reduction of Selected para-Substituted Acetophenones," ***Journal of Organic Chemistry***, 33, 412 (1968).

(with Wells,C.M., and Trefonas,L.M.) "A Computerized Stockroom," ***Journal of Chemical Education***, 45, 132 (1968).

(with Stocker,J.H.) "The Ratio of Diastereomeric Pinacols formed in the Electrolytic Bimolecular Reduction of Acetophenone," ***Journal of Organic Chemistry***, 33, 294 (1968).

(with Stocker,J.H.) "The Ratios of Diastereomeric Glycols formed in the Electrolytic Bimolecular Reduction of Benzaldehyde and Propiophenone", ***Journal of Organic Chemistry***, 33, 2145 (1968).

(with Stocker,J.H.) "The Electrochemical Transformation of Trifluoroacetophenone into Acetophenone; an unusually ready Hydrogenolysis of the C-F Bond", ***Chemical Communications***, 934 (1968).

(with Stocker,J.H.) "The Ratio of Diastereomeric Pinacols Produced in the Electrolytic Bimolecular Reduction of 2-Acetopyridine", ***Journal of Organic Chemistry***, 34, 2807 (1969).

(with Stocker,J.H., and Kern,D.H.) "The Photochemical and Electrochemical Bimolecular Reduction of Aldehydes and Unsymmetrical Ketones; A Common Stereochemistry", ***Journal of Organic Chemistry***, 34, 2810 (1969).

Jenevein,R.M., "Stereochemistry of the Bimolecular Electrochemical Reduction of Selected Aldehydes and Unsymmetrical Ketones", ***Ph.D. Dissertation***, May 1969.

(with Stocker,J.H.) "Effect of the Medium on the Stereochemistry of the Electropinacolization of Acetophenone", ***Collection of Czechoslovak Chemical Communications***, 36, 925 (1971).

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(Jenevein) "A Wafer-Scale Optical Bus", Patent awarded December 7, 1993.

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Jenevein, R. M., "A Preliminary Report on the Network Controller for the Texas Reconfigurable Array Computer,"***TRAC Technical Report 17***, August 1980.

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(With Buddhikot and Womack) "Synchronization in an Optically Interconnected Clustered Multiprocessor," ***Computer Sciences Technical Report***, July 1993, University of Texas at Austin.

RESEARCH ACCOMPLISHMENTS:

In 1980 - 1981, designed and implemented the reconfiguration hardware and software for a parallel computing system, the **Texas Reconfigurable Array Computer**(TRAC: Dept of Electrical and Computer Engineering, UT Austin) while on sabatical leave from the University of New Orleans.

In 1985 - 1986, defined **KYKLOS** as a fault-tolerant interconnection network and formulated a generalized definition for the network connectivity. Also formulated **hyperKYKLOS** and showed it to be superior to hypercube for database applications.

In 1985 - 1987, defined **SK-Banyan** networks and provided a general formulation such that **SW-Banyans**, and **CC-Banyans** are definable within the same framework. Further showed that there are many SK-Banyan networks with superior distance and traffic properties to that of **SW-Banyans**.

In 1986 - 1988, designed the architecture for the **KYKLOS Database Machine**. A 16 node version of the database machine has been shown to outperform a 20 node Teradata parallel database machine by 35:1. Its unique features consisted of a very fast and economical sorter, a content addressable data mapper and the KYKLOS interconnection network along with multiple levels of parallelism and a concentration on algorithmically controlled dataflow to minimize contention.

In 1986 - 1989, advanced the concepts of **METRIC** as a "multi-threaded processing element" leading to a parallel multi-threaded architecture. Some of **METRIC's** attributes are: zero cycle context switching with priority silicon-based scheduling, "fork & join" primitives in the instruction set, send/receive/reply interprocess hardware communication primitives, and instruction/data/context caches. Investigations proceeded into the use of **METRIC** as a silicon real time kernel. With eight contexts, execution rates of up to three instructions per cycle could be sustained.

In 1987 - 1989, **ATOMS**, a performance prediction system for C programs which accurately predicts execution times to within 20% of actual running times (and usually to within 10%). The system was extended to allow for graphical display of the program graph in a hierarchical manner.

In 1989 - 2002, **metriX**, a precise processor measurement system which measures CPU/memory, cache (instruction and data cache independently), virtual memory, integer and floating point arithmetic, function call/return, branch performance and I/O performance. The system is totally written in C and is portable within UNIX and NT based systems. Measurement times are provided in both CPU cycles and seconds. **metriX** was used to analyze the PowerPC and Intel Pentium based systems at Somerset Design Center (and Motorola). This work showed performance bottlenecks in PowerPC 604 systems and was directly responsible for the performance advantages of the PowerPC G3 and G4 processors compared to that of Intel's Pentium III & IV systems. Currently, **metriX** is being used as a performance test system on PowerPC chips to be available in the near future.

In 1989 - 1996, **ORION**, a wafer scale integration optical network which provides optical rather than electrical based communication on a silicon chip or wafer. It represents the first practical means of implementing an optical bus on the surface of silicon and has a bandwidth in excess of 2GB/s. It is fault resilient and topologically insensitive. It supports an optical distribution of the clock on silicon. In addition, it can be employed as an optical analogy of a multi-chip module (MCM). While 30% of the area of current RISC processors are dedicated to global buses and pads, the area required for **ORION's** optical emitter and detectors are less than 0.1%. A patent was issued in 1993.

In 1995, I developed a comprehensive data recovery methodology that resulted in the formation of HighPoint Technologies Corp. The work lead to the product "Inspector PC / File Recovery", along with a patent filing (and recent award) on the methodology. Then later in 1997, a feature rich version called "DataBack" and "DataBack/Pro" was released. In 1998, PowerQuest Corp. acquired HighPoint and renamed the product to "Lost & Found". As part of the acquisition, I became Chief Technology Officer for PowerQuest. I directed their future technology directions for products like Partition Magic, Drive Image, Lost & Found, Second Chance and all OEM efforts with Dell, Compaq, Gateway, IBM, Panasonic, Sony and HP.

STUDENTS ADVISED and GRADUATED at THE UNIVERSITY of TEXAS at AUSTIN

Name	Degree	Employment or Status
Bernard Menezes	Ph.D. in December 1987	Faculty, Univ. of Maryland
Dong Kim,	Ph.D. in May 1988	Digital Equipment Corp.
Julio DeMelo	Ph.D. in December 1989	Univ. Federal de Minas, Brazil
Stephen Brown	Ph.D. in December 1989	IBM
Michael Ojukwu	Ph.D. in August 1990	AT&T Bell Labs
Christopher Walton	Ph.D. in May 1992	IBM
Won Woo Park	Ph.D. in August 1992	Samsung USA
Luis Laranjeira	Ph.D. In December 1992	Tandum Computers
Mukund Buddhikot	Ph.D. In August 1995	Intel Corp.
Sharif Shahrier	Ph.D. In May 1997	NEC
Thomas Glover	M.S. December, 1986	Motorola Corp.
Arun Ramachandran	M.S. May, 1987	Cirus Logic
Huang Chienhsi	M.S. May, 1987	PhD student
Debra Braise	M.S. May, 1987	IBM
Vivekanand Bhat	M.S. August, 1987	Valid Logic
Thomas Mookken	M.S. August, 1987	AT&T Bell Labs
Mark Diltz	M.S. December, 1987	Sandia National Labs
Sudhi Balakrishner	M.S. December, 1987	PhD student
Vivik Vermani	M.S. May, 1988	GTE
Ameesh Deshi	M.S. May, 1988	LSI Logic
Arun Chatterjee	M.S. May, 1988	PhD Student
Rajiv Patel	M.S. May, 1988	Sun Microsystems
Rohit Kapur	M.S. May, 1988	PhD Student
Farhan Gunja	M.S. August, 1988	LSI Corp.
Shreesh Dubey	M.S. August, 1988	Intel Corp.
Alice Anderson	M.S. May, 1989	Motorola Corp.
Azhar Rauf	M.S. December, 1991	Motorola Corp.
Shailja Dhruva	M.S. December, 1991	Intel Corp.
Hyder Alkasimi	M.S. December, 1991	Southwest Research Institute
Avi Kumar	M.S. May 1995	Intel Texas Design Center
Vann Walk	M.S. May 1996	U.S.Navy

EXHIBIT B

PARTIES' PROPOSED CONSTRUCTIONS AND SUPPORT

A. U.S. Patent 6,446,045 (The '045 Patent)

* Designates a non-MPF term identified by the Plaintiff.

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
1.	**means for applying corresponding guidelines of the media venues**	1	**Agreed Function**: applying corresponding guidelines of the media venues Structure: computer software executable on a processor capable of (1) identifying one or more selected media venues for publication; (2) accessing data representing each identified media venue's guidelines; (3) accessing data representing seller information; and (4) executing a systematic sequence of mathematical and/or logical operations upon the accessed seller information to create a presentation customized for each identified media venue in a form that complies with the accessed guidelines of that media venue, or equivalents (Presentation Generation Program 1710, Blocks (blocks 11230, 11232, 11290, 11292, 11294, 11300, 11312, 11320, Figs. 4d, 4e) **Support: See, e.g., '045 Patent, 17:1 - 18: 8; 18:63 - 19:65; 41:43 - 43:52; Figs. 4b-4e.**	Google & Yahoo: This claim is indefinite because it lacks sufficient structure in the written description. *Biomedino LLC v. Waters Technology Corp.*, 490 F3.d 946, 952 (Fed. Cir. 2007). Google & Yahoo: Structure: a seller interface including a central processor, operating system, ROM, RAM, clock, communication port, video driver, video monitor, input devices (e.g., standard keyboard, mouse, or other replacement items), modem, network interface, data storage device, a presentation database including information related to the seller's choice of media or venues as well as the presentation of their products, goods, or services; a seller database; a presentation rules database including information from the internet media venue to control and limit the style and editing of the presentations; and a Presentation & Configuration Program (which lacks any structural description). **Support: See, e.g., '045 Patent, 25:62-26:27:2; FIGS. 2a-2e; see also 17:25-38; 18:63-19:10; 27:55-28:9; 40:16-**

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
				41:65; 54:60-56:17; 57:36-43; 57:51-57; FIGS. 2a-2e, 4a-4h; '059 Patent's File History, Request for Reconsideration, Paper 13, September 5, 2006, at pp. 18-19; '587 Patent's File History, Amendment and Response, -- Paper 9, August 12, 2003, at pp. 16-19; '045 Patent's File History, Amendment and Response, Paper 4, January 22, 2002, at pp. 5-11; see generally '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) (attempting to distinguish prior art); Id. at 8, n.5; Id. at 10 (citing '045 Patent at 58:2-5; 3:23-25).
2.	**means for transmitting said presentations to a selected media venue of the media venues**	1	**Agreed Function**: transmitting said presentations to a selected media venue of the media venues. Structure: computer software executable on a processor capable of initiating a data transmission to a specified electronic destination, or equivalents (Presentation Generation Program 1710, Block 11390, Fig. 4g) **Support: See, e.g. '045 Patent, 45:5-15, Fig. 4g and Fig. 4h.**	Google & Yahoo: This claim is indefinite because it lacks sufficient structure in the written description. *Biomedino LLC v. Waters Technology Corp.*, 490 F3.d 946, 952 (Fed. Cir. 2007). Structure: On-demand, direct dial-up phone lines, network, or Internet connection between Seller Interface, Media Interface, and Central Controller and Presentation Processor; standard Internet connections between Buyer Interface and Central Presentation and Selection Server; and a high-speed network or Internet connection between Central Controller and Presentation Processor and Central Presentation and Selection Server.

#	Term/Phrase	Claims	Plaintiff's Constructions	Defendants' Constructions
				Connections between components my be accomplished by any combination of public switched phone network, cellular, Personal Communication System, dedicated data lines, microwave, private network, shared data network, or satellite network. **Support: See, e.g., '045 Patent, 13:55-14:30; 41:58-42:14; see also 3:28-35; 4:47-5:23; 11:20-27; 19:31-65; 34:22-35-32; 43:28-44:16; 45:6-13; 51:1-23; 54:29-56:17; 57:36-43; 58:34-44; FIGS 4a-h; '059 Patent's File History, Request for Reconsideration, Paper 13, September 5, 2006, at pp. 16-17, 21.**
3.	**means for a seller to select the media venues**	1	**Agreed Function:** enabling a seller to select the media venues. Structure: computer software executable on a processor capable of presenting electronic forms allowing the selection of media venues, or equivalents (Presentation & Configuration Program 4715, Block 11130, Fig. 4a) **Support: See, e.g., '045 Patent 27:55 - 28:9; 40:65 - 41:42; FIG.4a.**	Google & Yahoo: This claim is indefinite because it lacks sufficient structure in the written description. *Biomedino LLC v. Waters Technology Corp.*, 490 F3.d 946, 952 (Fed. Cir. 2007). Google & Yahoo: Structure: a seller interface including a central processor, operating system, ROM, RAM, clock, communication port, video driver, video monitor, input devices (e.g., standard keyboard, mouse, or other replacement items), modem, network interface, data storage device, and further including a Presentation & Configuration Program (which lacks any structural description).

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
				Support: See, e.g., '045 Patent 24:26-25:23; FIGS. 1a, 1b, 2c; see also 3:13-35; 24:26-25:23; 27:55-28:9; 40:65-41:21; 54:60-55:22; FIGS. 4a-h; '045 Re-exam, see generally '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) (attempting to distinguish prior art); Id. at 28.
4.	**means for the seller to input information; [whereby the seller may select one or more of the media venues, create a presentation that complies with said guidelines of the media venues selected, and transmit the presentation to the selected media venues for publication** *]**	1	Function: enabling a seller to input information Structure: computer software executable on a processor capable of presenting electronic forms allowing the seller to input information, or equivalents (Presentation & Configuration Program 4715, Block 11140, Fig. 4a) **Support: See, e.g., '045 Patent, 27:55 - 28:9; 54:60 - 56:17; FIG. 4a.**	Google & Yahoo: This claim is indefinite because it lacks sufficient structure in the written description. *Biomedino LLC v. Waters Technology Corp.*, 490 F3.d 946, 952 (Fed. Cir. 2007). Google & Yahoo: Function: enabling the seller to input information to select one or more media venues, create a presentation that complies with said media guidelines of the selected media venues, and transmit the presentation to the selected media venues for publication. Structure: a seller interface including a central processor, operating system, ROM, RAM, clock, communication port, video driver, video monitor, input devices (e.g., standard keyboard, mouse, or other replacement items), modem, network interface, data storage device, and a

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	***** Defendants ask the Court to construe the bracketed phrase with the non-bracketed phrase, whereas Plaintiff contends that the whereby clause modifies more than just the non-bracketed phrase.**			Presentation & Configuration Program (which lacks any structural description). **Support: See, e.g., '045 Patent, 24:26-25:23; 25:62-26:13; 26:14-47; 26:48-27:2; 41:66-42:14; FIGS. 1a, 1b, 2a-2e; see also 5:27-30; 12:63-13:3; 14:24-30; 17:25-38; 18:63-19:10; 27:48-28:40; 32:58-33:63; 40:17-64; 57:36-43; FIGS. 4a-h; '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) at 10 (citing '045 Patent at 58:2-5; 3:23-25).**
4a.	**whereby the seller may select one or more of the media venues, create a presentation that complies with said guidelines of the media venues selected, and transmit the presentation to the selected media venues for publication**	1	whereby the seller may select one or more of the supported media venues, input information for use by the computer programming in creating customized advertisements in accordance with the controls set by each media venue, and transmit each customized presentation to each respective media venue for publication **Support: See, e.g., 045 Patent, 17:1 - 8: 8; 18:63 - 19:65; 27:55 - 28:9; 41:43 - 43:52; 54:60 – 56:17 Figs. 4d, 4e.**	**See row above. Defendants ask the Court to construe this phrase with the phrase above.**
5.	**means for said**	5	**Agreed Function:** enabling the media	Google & Yahoo:

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	media venues to input said guidelines and information		venues to input said guidelines and information. Structure: computer software executable on a processor capable of presenting electronic forms allowing the media venue to input guidelines and information for that media venue, or equivalents (Media Configuration Program 6717, Fig. 2e) **Support: See, e.g., '045 Patent, 33:45 - 57; 53:54 - 54:59; FIG. 2e.**	Structure: a media interface including a central processor, operating system, ROM, RAM, clock communication ports, video driver, video monitor, input devices (e.g., standard keyboard, mouse, or other replacement items), modem, network interface, and data storage device, and a Media Configuration Program (which lacks any structural description). **Support: See, e.g., '045 Patent, 30:60-31:17; FIGS. 1a, 1b, 2e; see also 12:63-13:3; 53:53-54:17.**
6.	**create a presentation that complies with said guidelines of the media venues selected**	1	produce a presentation customized to each of the selected media venue's presentation rules **Support: See, e.g., '045 Patent, 1:1 - 23; 4:60 - 5:24; 5:52-61.**	Google & Yahoo: create a presentation that complies with the guidelines of all the selected media venues. **Support: See, e.g., '045 Patent, 17:25-38; 18:63-19:23; 27:55-28:9; 40:65-41:42; 54:60-56:7; 57:36-43; 57:51-57; '059 Patent's File History, Request for Reconsideration, Paper 13, September 5, 2006, at pp. 18-19; 587 Patent's File History, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19; see generally, '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) (attempting to distinguish prior art); Id. at 10 (citing '045 Patent at 58:2-5; 3:23-**

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
				25).
7.	**A method of using a network of computers to contract for, facilitate and control the creating and publishing of presentations, by a seller, to a plurality of media venues owned or controlled by other than seller, comprising**	1	A method of using a computer network that facilitates and controls the creation and publication of presentations, by a seller, to multiple media venues owned or controlled by other than seller, that includes **Support: See, e.g., '045 Patent, 1:1-23; 4:60 - 5:24; 5:52-61.**	Google: The preamble limits this claim and the phrase "owned or controlled by other than the seller" means that the media venue ultimately controls the publishing of presentations. See, e.g., '045 Patent, 43:53-67 and '045 Patent prosecution history, Response dated 1/22/02 at 6-8. Yahoo: A method of using the sellers' computers, the media venues' computers, and the Resident Media computers, that may communicate either continuously or on-demand for the purpose of sharing processing, transferring information and data to contract for, facilitate, and control the creating and publishing of presentations, by a seller, to a plurality of media venues owned or controlled by other than the seller, comprising **Support: See, e.g., '045 Patent, 5:27-31; 12:63-13:3; 13:37-14:30; 17:67-18:8; 18:63-19:23; 24:26-25:11; 30: 60-31:53; 40: 16-45:13; 53:1-57:7; 57:39-43; FIGS. 1a, 1b, 2a-e.**
8.	**media venue**	'045, claim 1; '025, claims 1 and 179; '059, claims 1 and	those physical or virtual locations (e.g. web servers, domain names, internet addresses, websites) where presentations are placed or made available to present the information within the framework of the media so that it is accessible by the end users, consumers,	Google & Yahoo: those physical or virtual locations (i.e., addresses) where presentations are placed or made available to present the information within the framework of the media so that it is accessible by the end users, consumers,

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
		27	viewers, or buyers. **Support: See, e.g., '025 Patent, 3:62 – 4:20; 10:50-67; 51:62 - 52:17; 58:51-67**.	viewers, or buyers. **Support: See, e.g., '045 Patent, 3:13-22; 3:58-4:1; 10:30-45; 51:1-10; 57:57-67.**

B. U.S. Patent 7,240,025 (The '025 Patent) & U.S. Patent 7,249,059 (The '059 Patent)

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
*1.	**create an electronic advertisement [for the seller, '059] for publication to the selected internet media venues**	'025 Patent, claims 1, 179 '059 Patent, claims 1, 27	produce an electronic advertisement in a form customized to each of the selected internet media venue's presentation rules **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:31- 46:6; 51:62 - 52:17.** **Support:. See e.g. '059 Patent, Abstract; 3:65 - 4:19; 5:15-40; 6:55-67; 7:25-42; 8:14-25; 24:44 - 25:50; 55:6 -56:21; 64:6-20.**	Google & Yahoo: create an advertisement for placement at all the internet media venue locations selected by the [seller/third party professional] for public display. **Support: See, e.g., '025 Patent, Abstract; 3:19-40; 18:8-28; 19:46-20:6; 28:42-63; 41:60-42:37; 44:36-45; 55:60-57:15; 58:36-43; 58:51-57; FIGS. 4a-h. See, e.g., '059 Patent, Abstract, 4:30-5:3; 45:19-35; 70:25-71:3. See, e.g., 059 Patent's File History, Request for Reconsideration, Paper 13, September 5, 2006, at pp. 18-19; '587 Patent's File History, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19; '059 Re-exam, FM Response to 1st OA at 7; see generally, '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) (attempting to distinguish prior art); Id. at 10 (citing '045 Patent at 58:2-5; 3:23-25); see generally, '059 Patent's File History, Re-exam Control No. 95/001,069 (attempting to distinguish prior art).**
2.	**A computer system for creating and publishing customized electronic**	'025 Patent, claims 1, 179	A computer system that produces for a seller and transmits for display on internet media venues not owned or controlled by the seller, electronic advertisements in a form customized	Google: Claim 1 and its dependent claims are also indefinite because they mix different statutory classes of inventions by claiming a system and a user using the system. *IPXL Holdings, L.L.C. v. Amazon.com LLC*, 430

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	advertisements, for a seller, to internet media venues owned or controlled by other than the seller, comprising: **A method of using a computer system for creating and publishing customized electronic advertisements, for a seller, to internet media venues owned or controlled by other than the seller, comprising**		to the presentation rules of each of the internet media venues, that includes A method of using a computer system that produces for a seller and transmits for display on internet media venues not owned or controlled by the seller electronic advertisements in a form customized to the presentation rules of each of the internet media venues, that includes **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:31- 46:6; 51:62 - 52:17.** **Support:. See e.g. '059 Patent, Abstract; 3:65 - 4:19; 5:15-40; 6:55-67; 7:25-42; 8:14-25; 24:44 - 25:50; 55:6 -57:51; 64:6-20.**	F.3d 1337, 1384 (Fed. Cir. 2005). Google: The preamble limits these claims and the phrase "owned or controlled by other than the seller" means that the media venue ultimately controls the publishing of presentations. See, e.g., '045 Patent, 43:53-67 and '045 Patent prosecution history, Response dated 1/22/02 at 6-8.
3.	**A computer system allowing a third party professional to manage, create and publish customized electronic advertisements, for a seller, to internet media venues**	'059 Patent, claim 1	A computer system that allows a third party professional to manage, create and publish customized electronic advertisements, for a seller, to internet media venues owned or controlled by other than the seller and other than the third party professional, comprising **Support:. See e.g. '059 Patent, Abstract; 3:61 - 4:19; 4:30-6:19;**	Google: Claim 1 and its dependent claims are also indefinite because they mix different statutory classes of inventions by claiming a system and a user using the system. IPXL Holdings, L.L.C. v. Amazon.com LLC, 430 F.3d 1337, 1384 (Fed. Cir. 2005). Google: The preamble limits this claim

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	owned or controlled by other than the seller and other than the third party professional, comprising		**6:55-8:3; 22:27 - 25:50; 55:6 - 57:51; 64:6-20.**	and the phrase "owned or controlled by other than the seller…" means that the media venue ultimately controls the publishing of presentations. See, e.g., '045 Patent, 43:53-67 and '045 Patent prosecution history, Response dated 1/22/02 at 6-8.
4.	**A method of using a computer system allowing a third party professional to manage, create and publish customized electronic advertisements, for a seller, to internet media venues owned or controlled by other than the seller and other than the third party professional, comprising**	'059 Patent, claim 27	**A method of using a computer system that allows a third party professional to manage, create and publish customized electronic advertisements, for a seller, to internet media venues owned or controlled by other than the seller and other than the third party professional, comprising** Support:. See e.g. '059 Patent, Abstract; 3:61 - 4:19; 4:30-6:19; 6:55-8:3; 22:27 - 25:50; 55:6 - 57:51; 64:6-20.	Google: The preamble limits this claim and the phrase "owned or controlled by other than the seller…" means that the media venue ultimately controls the publishing of presentations. See, e.g., '045 Patent, 43:53-67 and '045 Patent prosecution history, Response dated 1/22/02 at 6-8.
5.	**internet media venues**	'025, claims 1 and 179; '059, claims 1 and 27	internet locations (e.g. web servers, domain names, internet addresses, websites) where presentations are placed or made available to present the information within the framework of the media so that it is accessible by the end users, consumers, viewers, or Buyers. **Support: See, e.g., '025 Patent, 3:62 -**	internet locations (i.e., addresses) where presentations are placed or made available to present the information within the framework of the media so that it is accessible by the end users, consumers, viewers, or Buyers **Support: See, e.g., '025 Patent, 3:19-28; 3:62-4:5; 10:50-67; 51:62-52:4; 58:57-67.**

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
			4:20; 10:50-67; 51:62 - 52:17; 58:51-67.	
6.	**self-serve interface**	'025 Patent, claims 6, 185	interface that the [internet media venue user/seller] uses without requiring the aid of anyone else **Support: See e.g., '025 Patent, 41:10 - 42:60; D066739-40**	Google & Yahoo: software and hardware at the [IMV/seller] location that a person working on behalf of the [IMV/seller] uses directly without the aid of anyone else. **Support: See, e.g., '025 Patent, 6:3-11; 25:12 – 31:2; 31:48 – 35:11; 54:63-67; 55:63-67; FIGS. 2c, 2e, 4a; '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) at 2-3 (citing '045 Patent at 5:35-41).**
7.	**first interface to the computer system**	'025 Patent, claims 1, 179	software that enables the internet media venue user to interact with the computer system. **Support:. See e.g. '025 Patent, 34:29-47; 54:53 - 55:58.** **Support:. See e.g. '059 Patent, 41:22-40; 31:54-57; 74:30-75:33.** **See also, e.g,** IEEE-STD 100 (1996), page 541, interface, definition 9(B) "a hardware or software component that connects two or more components for the purpose of passing information from one to the other"	Google & Yahoo: software and hardware at the internet media venue location that enables a person working on behalf of the internet media venue to interact with the computer system. **Support: See, e.g., '025 Patent, 13:40-47; 31:48 – 35:11; 54:63-67; Fig. 2e.**

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
8.	**each of the internet media venues is prompted to input presentation rules**	'025 Patent, claim 1; '059 Patent, claim 1	each internet media venue user is prompted to input presentation rules **Support:. See e.g. '025 Patent, 34:35-47; 54:53 - 55:58.**	Google & Yahoo: every one of the internet media venues is prompted to input presentation rules. **Support: See, e.g., '025 Patent, 34:35-47; 54:53 – 55:58; 59:1-8.** **Extrinsic Support: See, "each" at YHFM04853647 – "every one of two or more considered individually or one by one"**
9.	**prompting each of the internet media venues… to input presentation rules**	'059 Patent, claim 27	each internet media venue is prompted to input its presentation rules **Support:. See e.g. '059 Patent, 41:22-40; 74:30-75:33.**	Google & Yahoo: every one of the internet media venues is asked to input presentation rules. **Support: See, e.g., '025 Patent, 34:35-47; 54:53 – 55:58; 59:1-8.** **Extrinsic Support: See, "each" at YHFM04853647 – "every one of two or more considered individually or one by one"**
10.	**selection information input by the seller**	'025 Patent, claims 20, 199	information input into the computer system by the seller that is used to select **Support:. See e.g. '025 Patent, 8:51-54; 41:39-42:48.**	Yahoo: information input by the seller to enable the seller to select one or more internet media venues. **Support: See, e.g., '025 Patent, 3:19-40; 19:41-20:6; 28:42-63; 41:60-42:60; 55:60-56:29; '025 Patent, claims 20-26, 29-30 (and method claim equivalents); Fig. 4a (11130); '045 Patent's File**

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
				History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) at 28.
11.	**presentation rules**	'025 Patent, claims 1, 179 '059 Patent, claims 1, 27	controls to be set by a media venue for use by the computer system programming in creating advertisements for publishing on that media venue **Support:. See e.g. '025 Patent, 18:29-58; 19:45-55; 54:53-55:16.** **Support:. See e.g. '059 Patent, 23:5-34;24:44-54; 74:30-75:32.**	Google & Yahoo: rules that control and limit the style and editing of the presentations created by the system. **Support: See, e.g., '025 Patent, 3:19-40; 19:41-20:6; 28:42-63; 41:60-42:60; 55:60-56:29; '025 Patent, claims 20-26, 29-30 (and method claim equivalents); Fig. 4a (11130); '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) at 28.**
12.	**design or style standards**	'025 Patent, claims 7,62, 63, 226, 241, 242	presentation rules which control the look and feel of an advertisement **Support: defined in claim itself** **Support:. See e.g. '025 Patent, 9:22-26.**	Google & Yahoo: this term is indefinite because it is unclear what the term means or does not mean. **Support: See, e.g., '025 Patent, 9:22-26; 55:4-17; '587 Patent's File History, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19.**
13.	**control look and feel of the advertisement**	'025 Patent, claims 47, 62, 63, 226, 241, 242	control the appearance of an advertisement **Support:. See e.g. '025 Patent, 5:10-27; 9:22-26.**	Google & Yahoo: this term is indefinite because it is unclear what the term means or does not mean. **Support: See, e.g., '025 Patent, 9:22-26; 55:4-17; '587 Patent's File History, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19.**
14.	**computer**	'025 Patent,	software that processes design or style	Google & Yahoo: this term is indefinite

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	program design filter	claims 47, 62, 63	standards **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:10 – 44:45; 51:62 - 52:17.**	because it has no ordinary meaning nor support in the written description. **Support: See, e.g., '025 Patent, 5:4-9; 19:46-20:14; 28:42-63; 41:60-42:60; 43:31-44:19; 51:62-52:17.**
15.	**automatically applying or compare/ing the internet media venue design or style standards to the information input by the seller or the advertisement**	'025 Patent, claims 47, 62, 63, 226, 241, 242, 269, 270	execute/ing a systematic sequence of mathematical and/or logical operations to apply or compare the internet media venue's design or style standards to the information input by the seller or to the advertisement **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:10 – 44:45; 51:62 - 52:17.**	Google & Yahoo: these terms are indefinite at least because of the multiple, cascading "or" in the claims themselves, and particularly because the "information" must be input by the seller "or" the [text] advertisement. **Support: See, e.g., '025 Patent, 5:4-9; 5:28-34; 19:46-20:14; 28:42-63; 41:60-42:60; 43:31-44:19; 51:62-52:17; 58:35-42; '587 Patent's File History, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19; see generally, '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) (attempting to distinguish prior art); see generally, '059 Patent's File History, Re-exam Control No. 95/001,069 (attempting to distinguish prior art).**
16.	**automatically apply/ing or compare/ing the internet media venue distribution factors to the**	'025 Patent, claims 79, 90, 91, 258, 269, 270	execute/ing a systematic sequence of mathematical and/or logical operations to apply or compare the internet media venue's distribution factors to the information input by the seller or to the advertisement	Google & Yahoo: these terms are indefinite at least because of the multiple, cascading "or" in the claims themselves, and particularly because the "information" must be input by the seller "or" the [text]advertisement.

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	information input by the seller or the advertisement		**Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:10 – 44:45; 51:62 - 52:17.**	**Support: See, e.g., '025 Patent, 5:4-9; 5:28-34; 19:46-20:14; 28:42-63; 41:60-42:60; 43:31-44:19; 51:62-52:17; 58:35-42; '587 Patent's File History, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19; see generally, '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) (attempting to distinguish prior art); see generally, '059 Patent's File History, Re-exam Control No. 95/001,069 (attempting to distinguish prior art).**
17.	**automatically…applying or comparing the internet media venue presentation rules to the information input by the seller or the advertisement**	'025 Patent, claim 319	execute a systematic sequence of mathematical and/or logical operations to apply or compare the internet media venue's presentation rules to the information input by the seller or the advertisement **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:10 – 44:45; 51:62 - 52:17.**	Google & Yahoo: these terms are indefinite at least because of the multiple, cascading "or" in the claims themselves, and particularly because the "information" must be input by the seller "or" the [text]advertisement. **Support: See, e.g., '025 Patent, 5:4-9; 5:28-34; 19:46-20:14; 28:42-63; 41:60-42:60; 43:31-44:19; 51:62-52:17; 58:35-42; '587 Patent's File History, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19; see generally, '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) (attempting to distinguish prior art); see generally, '059 Patent's File History, Re-exam Control No. 95/001,069 (attempting to distinguish prior art).**
18.	**distribution factors**	'025 Patent,	rules concerning whether advertising	Google & Yahoo: information about where

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
		claims 79, 90, 91, 258, 269, 270	content may be published on a particular media venue **Support: See e.g. '025 Patent, 18:29-58. See also examples in dependent claims.**	the internet media venue will make the advertisement available, such as billboards, skywriters, bus benches, radio, interactive kiosk, and any other form of customer **Support: See, e.g., '025 Patent, 3:19-43; 51:62-52:20; 55:60-56:21; 58:51-59:8.**
19.	**computer program distribution filter**	'025 Patent, claims 79, 90, 91	software that processes distribution factors **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:10 – 44:45; 51:62 - 52:17.**	Google & Yahoo: this term is indefinite because it has no ordinary meaning nor support in the written description. **Support: See, e.g., '025 Patent, 3:19-43; 51:62-52:20; 55:60-56:21; 58:51-59:8.**
20.	**blocked URLs**	'025 Patent, claim 81	internet locations that are precluded from displaying a presentation **Support: See e.g. '025 Patent, 18:29-58.** **WEBSTER'S NEW WORLD DICTIONARY OF COMPUTER TERMS 7TH ED. (1999) P. 544, definition of "URL"; "Acronym for Uniform Resource Locator. In the World Wide Web, one of two basic kinds of Universal Resource Identifiers (URI), a string of characters that precisely identifies an Internet resource's type and location."**	Google & Yahoo: this term is indefinite because it unclear what it means in view of the written description. **Support: See, e.g., '025 Patent, 18:29-50; 27:35-56; 33:48-34:3.**
21.	**a second interface to the computer system through**	'025 Patent, claims 1, 179	software that enables the seller user to interact with the computer system through which the seller user is	Google & Yahoo: software and hardware at the seller location in communication with the computer system through which the

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	which a seller is prompted to input information to select one or more of the internet media venues		prompted to enter information to select one or more internet media venues **Support: See e.g. '025 Patent, 28:35 – 63; 41:10-42:48; 55:60-57:15.**	seller is prompted to enter information to enable the seller to select one or more internet media venues. **Support: See, e.g., '025 Patent, 3:19-40;5:31-34; 13:40-47; 15:3-9; 18:8-28; 18:50-58; 19:55-60; 25:12-40; 28:35-29:27; 41:10-42:16; 55:60-56:22; 58:36-43; FIGS. 1a, 1b, 2c; 4a-h; claims 1, 20-30 of the '025 Patent (see also method equivalent claims 179-397); '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) at 28.**
22.	**third party professional is prompted to input information to select one or more the internet media venues**	'059 Patent, claim 1	third-party professional is prompted to input information used to select one or more internet media venues **Support: See e.g. '059 Patent, 45:19-35; 69:22-71:3; 75:34 - 77:3.**	Google: The third party professional is prompted to enter information to enable the third party professional to select one or more internet media venues **Support: Abstract; 4:30-5:3; 45:19-35; 70:25-71:3; '059 Re-exam, FM Response to 1st OA at 12–13, 15; '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) at 28.**
23.	**prompting the third party professional…to input information to select one or more of the internet media venues**	'059 Patent, claim 27	prompting the third-party professional to input information used to select one or more internet media venues **Support: See e.g. '059 Patent, 45:19-35; 69:22 - 71:3; 75:34 - 77:3.**	Google: The third party professional is prompted to enter information to enable the third party professional to select one or more internet media venues **Support: Abstract; 4:30-5:3; 45:19-35;**

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
				70:25-71:3; '059 Re-exam, FM Response to 1st OA at 12–13, 15; '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) at 28.
24.	**advertisement generation program**	'025 Patent, claim 148	software that displays an electronic advertisement **Support: claims 143 and 144 themselves.** **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:31- 46:6; 51:62 - 52:17.**	Google: this term is indefinite because it has no ordinary meaning and no support in the written description. Yahoo: advertising software at the internet media venue location **Support: See, e.g., '025 Patent, 3:32-40; 19:46-20:14; 28:42-63; 41:10-59; 43:31-44:45; 51:62-52:17; 52:28-42; 59:9-15.**
25.	**processing…the electronic advertisement… in compliance with the presentation rules of the internet media venue**	'025, claims 1 and 179; '059, claims 1 and 27	executing a systematic sequence of mathematical and/or logical operations upon the inputted information to create an electronic advertisement customized for each selected internet media venue in a form that complies with the presentation rules set by that media venue **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:31- 46:6; 51:62 - 52:17.**	Google: this claim is indefinite because the "in compliance with the presentation rules of the internet media venue" language does not specify which internet media venue's presentation rules must complied with. Yahoo: obtaining and applying the presentation rules from the first database to create the electronic advertisement in compliance with the presentation rules of the internet media venue. **Support: See, e.g., '025 Patent, 5:4-9; 5:28-34; 19:46-20:14; 28:42-63; 41:60-42:60; 43:31-44:19; 51:62-52:17; 58:35-42; '587 Patent's File History, Amendment**

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
			Support:. See e.g. '059 Patent, Abstract; 3:61 - 4:19; 4:30-6:19; 6:55-8:3; 22:27 - 25:50; 55:6 - 57:51; 64:6-20. **See also D066743-52**	**and Response, Paper 9, August 12, 2003, at pp. 16-19; see generally, '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) (attempting to distinguish prior art); see generally, '059 Patent's File History, Re-exam Control No. 95/001,069 (attempting to distinguish prior art).**
*26.	**a computer controller of the computer system processing and publishing the electronic advertisement to one or more of the selected internet media venues in compliance with the presentation rules of the internet media venue, whereby the electronic advertisement is displayed on each of the one or more of the selected internet media venues in compliance with the presentation rules**	'025 Patent, claims 1, 179; '059 Patent, claims 1, 27	a computer processor of the computer system executing a systematic sequence of mathematical and/or logical operations upon the inputted information to create an electronic advertisement customized for each selected internet media venue in a form that complies with the presentation rules set by that internet media venue and placing or making available the customized electronic advertisement within the framework of each internet media venue so that it is accessible by the end users, consumers, viewers, or buyers so that the electronic advertisement is displayed on each internet media venue in a form customized to each internet media venue's presentation rules **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:31- 46:6; 51:62 - 52:17.** **Support:. See e.g. '059 Patent,**	Yahoo: "processing . . . the electronic advertisement" means "obtaining and applying the presentation rules from the first database to create the electronic advertisement" Google & Yahoo: "publishing the electronic advertisement to one or more of the selected internet media venues" means placing the electronic advertisement at the <u>one or more selected</u> internet media venue <u>locations</u> for public display; "whereby the electronic advertisement is displayed on each of the one or more internet media venues" means the advertisement is displayed on every one of the internet media venue locations selected by the seller "in compliance with the presentation rules of the internet media venue" is indefinite because the language does not specify which internet media venue's presentation rules must complied

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	of the internet media venue		**Abstract; 3:61 - 4:19; 4:30-6:19; 6:55-8:3; 22:27 - 25:50; 56:12-21; 64:6-20.** **See also D066743-52**	with. **Extrinsic Support: See, "each" at YHFM04853647 – "every one of two or more considered individually or one by one"** **Support: See, e.g., '025 Patent, 3:19-40; 5:10-27; 11:48-56; 18:8-28; 19:46-20-49; 28:42-63; 35:13-36:23; 41:10-42:37; 42:53-60; 43:31-45:9; 45:66-46:6; 51:62-52:17; 52:28-42; 55:28-57:15; 58:36-43; 58:51-57; 59:9-15; 59:34-44; '059 Patent's File History, Request for Reconsideration, Paper 13, September 5, 2006, at pp. 18-19; '587 Patent's File History, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19.**
27.	**publish the advertisement to the internet media venue**	'025 Patent, claim 79, 90, 258, 269	placing or making available the customized electronic advertisement within the framework of each internet media venue so that it is accessible by the end users, consumers, viewers, or Buyers **Support: See e.g. '025 Patent, 45: 65-46:7.**	Google & Yahoo: place the advertisement at the internet media venue location for public display. **Support: See, e.g., '025 Patent, 3:32-40; 5:10-27; 11:48-56; 20:7-49; 35:13-36:23; 42:53-60; 44:23-45:9; 45:66-46:6; 51:62-52:17; 55:28-57:15; 58:36-43; 59:34-44; FIGS. 4a-h; '059 Patent's File History, Request for Reconsideration, Paper 13, September 5, 2006, at pp. 16-17, 21.**
28.	**publishes the modified or reformatted**	'025 Patent, claim 148	the computer processor places or makes available the modified or reformatted	Google & Yahoo: "publishes the modified or reformatted advertisement

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
	advertisement through the computer controller to the one or more of the selected internet media venues for display by an advertisement generation program in compliance with the internet media venue presentation rules		advertisement within the framework of each internet media venue so that it is accessible by the end users, consumers, viewers, or buyers for display by an advertisement generation program in compliance with the internet media venue presentation rules **Support: See e.g. '025 Patent, Abstract; 3:62-4:20; 4:64-5:9; 43:31- 46:6; 51:62-52:17. See in particular 45: 65- 46:7.**	to the one or more of the selected internet media venues for display" means places the modified or reformatted advertisement at the one or more internet media venue locations for public display. **Support: See, e.g., '025 Patent, 3:32-40; 5:10-27; 11:48-56; 20:7-49; 35:13-36:23; 42:53-60; 43:54-45:9; 44:23-45:9; 45:66-46:6; 51:62-52:17; 55:28-57:15; 58:36-43; 59:34-44; FIGS. 4a-h; '059 Patent's File History, Request for Reconsideration, Paper 13, September 5, 2006, at pp. 16-17, 21.**
29.	**computer controller processes the advertisement by automatically applying or comparing the internet media venue presentation rules to the information input by the seller or the advertisement**	'025 Patent, claim 140	Computer processor executes a systematic sequence of mathematical and/or logical operations upon the inputted information or advertisement to create an advertisement customized for each selected internet media venue in a form that complies with the presentation rules set by that internet media venue by applying or comparing the presentation rules of the internet media venue to the information input by the seller or the advertisement **Support: See e.g. '025 Patent, Abstract; 3:19 - 4:28; 4:62 – 6:11; 17:50-65; 19:45 -20:49; 23:4-39; 43:31- 46:6; 51:62 - 52:17.**	Google & Yahoo: these terms are indefinite at least because of the multiple, cascading "or" in the claims themselves, and particularly because the "information" must be input by the seller "or" the [text] advertisement. **Support: See, e.g., '025 Patent, 5:4-9 19:46-20:14; 28:42-63; 41:60-42:60; 43:31-44:19; 51:62-52:17; '587 Patent, Amendment and Response, Paper 9, August 12, 2003, at pp. 16-19; '045 Patent's File History, Re-exam Control No. 95/001,061, Response to Office Action (Dec. 23, 2008) at 10 (citing '045 Patent at 58:2-5; 3:23-25); see generally, '059 Patent's File History, Re-exam Control**

#	*Term/Phrase*	*Claims*	*Plaintiff's Constructions*	*Defendants' Constructions*
				No. 95/001,069 (attempting to distinguish prior art).
30.	**third interface to the computer system**	'059, claim 1 and 27	software that enables the third party professional user to interact with the computer system **Support: See e.g. '059 Patent, 45:19-35; 69:22-71:3; 75:34 – 77:3.**	software and hardware at the third party professional location that enables the third party professional to interact with the computer system. **Support: See e.g. '059 Patent, Fig. 2f; 42:5-46:3.**