

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

**BRIGHT RESPONSE, LLC**

**Plaintiff,**

**v.**

**GOOGLE INC., et al.,**

**Defendants.**

**Civil Action No. 2:07-cv-371-TJW**

**JURY**

**DEFENDANTS' CLAIM CONSTRUCTION CHART**

Pursuant to the Court's Docket Control Order and P.R. 4-5(d), Defendants submit this Claim Construction Chart on computer disk in WordPerfect format.

The following includes the chart agreed to by the parties, except for one sentence that Plaintiff proposed to include that relates to confidential settlement discussions that Defendants believe are inappropriate for inclusion in this chart. Defendants requested that Plaintiff agree to a joint filing without this sentence, but Plaintiff did not respond. Accordingly, to meet the Court's deadline, Defendants file this statement separately. Defendants are hopeful that the parties can file a joint statement after further consideration by Plaintiff.

**AGREED CONSTRUCTIONS**

| <b>Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase</b>  | <b>Plaintiff's Construction</b> | <b>Google and AOL's Construction</b> | <b>Court's Construction</b>  |
|--|---------------------------------|--------------------------------------|--|
| Classifying the electronic message / the classification step (Claim 28)*   | [AGREED]                        | [AGREED]                             | Determining whether the electronic message falls into one or more categories.                                  |
| A Case Model of the Electronic Message (Claim 30)*   | [AGREED]                        | [AGREED]                             | Text and attributes derived from the electronic message.   |
| The Case Model (Claims 30 and 33)*   | [AGREED]                        | [AGREED]                             | "The case model" is the same "case model of the electronic message" that is produced in step (b1) of claim 30. |
| Wherein each score is normalized by dividing the score by a maximum possible score for the stored case model (Claim 31)* | [AGREED]                        | [AGREED]                             | Wherein each match score is divided by the maximum possible score for the stored case model.                   |
| Fixed Data (Claim 39)*   | [AGREED]                        | [AGREED]                             | Data in a predetermined arrangement.   |
| Variable Data (Claim 40)*  | [AGREED]                        | [AGREED]                             | Data in any arrangement.   |

\*The claims in which these terms appear are included in the currently operative infringement contentions against Defendants Google and AOL, and are asserted in the proposed infringement contentions against Yahoo, which are the subject of a currently pending motion for leave to supplement the infringement contentions [Dkt No. 258]. Yahoo contends that it did not participate in the discussions regarding these constructions, because leave has not been granted to assert the claims in which these terms appear against Yahoo. Yahoo

contends that, for the same reason, it has not proposed any constructions for these terms and that only claims 26-27 and 38-40 have been formally asserted against Yahoo. Yahoo contends that it was not involved in the proposed constructions for terms not appearing in claims 26-27 and 38-40. Bright Response contends that counsel to Yahoo had the opportunity to participate in the claim construction process regarding these terms.

Additionally, plaintiff and defendants Google and AOL have agreed that “case model,” “stored case models of the case base,” and “a set of attributes for identifying specific features of the electronic message” need not be construed.

**DISPUTED CONSTRUCTIONS**

| <b>Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase</b>                             | <b>Claim Language with Disputed Terms in Bold</b>   | <b>Plaintiff’s Construction</b>  | <b>Defendants’ Construction</b> | <b>Court’s Construction</b> |
|---|---|--|---------------------------------|-----------------------------|
| Non-Interactive Electronic Message/The Electronic Message (Claims 26, 27, 28, 30, 38, 39, and 40) | 26. A method for automatically processing a <b>non-interactive electronic message</b> using a computer, comprising the steps of:<br><br>(a) receiving <b>the electronic message</b> from a source;<br><br>(b) interpreting <b>the electronic message</b> using a rule base and case base knowledge engine; and<br><br>(c) retrieving one or more predetermined responses corresponding to the | An electronic message not requiring additional input or supplementation from the sender. | This claim term is indefinite.  |                             |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold   | Plaintiff's Construction | Defendants' Construction | Court's Construction |
|--|--|--------------------------|--------------------------|----------------------|
|  | <p>interpretation of <b>the electronic message</b> from a repository for automatic delivery to the source.</p> <p>27. The method of claim 26, wherein the source of <b>the electronic message</b> is not predetermined.</p> <p>28. The method of claim 26, further comprising the steps of:</p> <p>(b1) classifying <b>the electronic message</b> as at least one of (i) being able to be responded to automatically; and (ii) requiring assistance from a human operator; and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of <b>the electronic message</b> from a repository for automatic delivery to the source when the classification step indicates that <b>the electronic message</b> can be responded to</p> |                          |                          |                      |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold  | Plaintiff's Construction | Defendants' Construction | Court's Construction |
|--|---|--------------------------|--------------------------|----------------------|
|  | <p>automatically.</p> <p>30. The method of claim 28, wherein the step of interpreting <b>the electronic message</b> further includes the steps of:</p> <p>(b1) producing a case model of <b>the electronic message</b> including (i) a set of attributes for identifying specific features of <b>the electronic message</b>; and (ii) message text;</p> <p>(b2) detecting at least one of text, combinations of text, and patterns of text of <b>the electronic message</b> using character matching;</p> <p>(b3) flagging the attributes of the case model which are detected in <b>the electronic message</b>;</p> <p>(b4) comparing the flagged attributes of the case model with stored attributes of stored case</p> |                          |                          |                      |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold  | Plaintiff's Construction | Defendants' Construction | Court's Construction |
|--|---|--------------------------|--------------------------|----------------------|
|  | <p>models of the case base;</p> <p>(b5) comparing the text of the case model with stored text of the stored case models of the case base; and</p> <p>(b6) assigning a score to each stored case model which is compared with the case model, the score increasing when at least one of the attributes and the text match the stored case model and the score not increasing when at least one of the attributes and the text do not match the stored case model.</p> <p>38. The method of claim 26, wherein the predetermined response is altered in accordance the interpretation of <b>the electronic message</b> before delivery to the source.</p> <p>39. The method of claim 26, wherein <b>the electronic message</b></p> |                          |                          |                      |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold   | Plaintiff's Construction  | Defendants' Construction   | Court's Construction |
|--|--|---|--|----------------------|
|  | <p>includes fixed data.</p> <p>40. The method of claim 26, wherein <b>the electronic message</b> includes variable data.</p>   |   |  |                      |
| Rule Base...Knowledge Engine (Claim 26)                        | <p>26. A method for automatically processing a non-interactive electronic message using a computer, comprising the steps of:</p> <p>(a) receiving the electronic message from a source;</p> <p>(b) interpreting the electronic message using a <b>rule base</b> and case base <b>knowledge engine</b>; and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source.</p> | A knowledge engine that tests whether an electronic message meets one or more conditions, and if so, applies specified actions. | A knowledge engine that contains "question" rules which take the form of IF-THEN statements with a left hand side of the statement containing a condition (or set of conditions) and a right hand side of the statement containing conclusion(s) (or actions). |                      |
| Case Base Knowledge Engine (Claim 26)                          | 26. A method for automatically processing a non-interactive electronic message using   | A knowledge engine that processes electronic messages by comparing them to a stored set of                                      | A knowledge engine that compares an incoming set of facts (a "problem") with a stored set of   |                      |

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|--|--|---|---|----------------------|
|  | <p>a computer, comprising the steps of:</p> <p>(a) receiving the electronic message from a source;</p> <p>(b) interpreting the electronic message using a rule base and <b>case base knowledge engine</b>; and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source.</p> | exemplar cases.   | exemplar cases representing past "problems" to obtain a set of prior cases which are used to formulate an appropriate action. |                      |
| Predetermined Response(s) (Claims 26, 28, and 38)              | <p>26. A method for automatically processing a non-interactive electronic message using a computer, comprising the steps of:</p> <p>(a) receiving the electronic message from a source;</p> <p>(b) interpreting the electronic message using a rule base and case base knowledge engine; and</p> <p>(c) retrieving one or more</p>   | <p>Bright Response is of the view that no construction of this term is required.</p> <p>If construed:</p> <p>Responses prepared prior to the receipt of the electronic message. The responses may be modified and/or altered based on the interpretation of the electronic message.</p> | Responses prepared prior to the receipt of the electronic message.  |                      |



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|--|--|--------------------------|--------------------------|----------------------|
|  | <p><b>predetermined responses</b> corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source.</p> <p>28. The method of claim 26, further comprising the steps of:</p> <p>(b1) classifying the electronic message as at least one of (i) being able to be responded to automatically; and (ii) requiring assistance from a human operator; and</p> <p>(c) retrieving one or more <b>predetermined responses</b> corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source when the classification step indicates that the electronic message can be responded to</p> |                          |                          |                      |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold  | Plaintiff's Construction   | Defendants' Construction | Court's Construction |
|--|---|--|--------------------------|----------------------|
|  | <p>automatically.</p> <p>38. The method of claim 26, wherein the <b>predetermined response</b> is altered in accordance the interpretation of the electronic message before delivery to the source.</p>   |  |                          |                      |
| Repository (Claims 26 and 28)                                  | <p>26. A method for automatically processing a non-interactive electronic message using a computer, comprising the steps of:</p> <p>(a) receiving the electronic message from a source;</p> <p>(b) interpreting the electronic message using a rule base and case base knowledge engine; and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a <b>repository</b> for automatic delivery to the source.</p> | <p>Bright Response is of the view that no construction of this term is required.</p> <p>If construed:<br/>A storage medium, for example, a database.</p> | Database.                |                      |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold  | Plaintiff's Construction  | Defendants' Construction  | Court's Construction |
|--|---|---|---|----------------------|
|  | <p>28. The method of claim 26, further comprising the steps of:</p> <p>(b1) classifying the electronic message as at least one of (i) being able to be responded to automatically; and (ii) requiring assistance from a human operator; and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a <b>repository</b> for automatic delivery to the source when the classification step indicates that the electronic message can be responded to automatically.</p> |   |   |                      |
| Requiring Assistance From A Human Operator (Claim 28)*         | <p>28. The method of claim 26, further comprising the steps of:</p> <p>(b1) classifying the electronic message as at least one of (i) being able to be responded to</p>   | Requiring that a manual reviewer review the electronic message or information derived from the electronic message, or review, revise or compose the response to be delivered to the | Requiring that a manual reviewer review, revise, or compose the response to be delivered to the source. |                      |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold  | Plaintiff's Construction   | Defendants' Construction  | Court's Construction |
|--|---|--|---|----------------------|
|  | <p>automatically; and (ii) <b>requiring assistance from a human operator;</b> and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source when the classification step indicates that the electronic message can be responded to automatically.</p>                          | source.  |   |                      |
| Stored Case Model (Claims 30, 31, and 33)*                     | <p>30. The method of claim 28, wherein the step of interpreting the electronic message further includes the steps of:</p> <p>(b1) producing a case model of the electronic message including (i) a set of attributes for identifying specific features of the electronic message; and (ii) message text;</p> <p>(b2) detecting at least one of text, combinations of text, and patterns of text</p> | Stored text and attributes associated with an exemplar case stored in the case base. | Stored text and attributes, derived from a previously received electronic message, and an associated stored response. |                      |

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|--|---|--------------------------|--------------------------|----------------------|
|  | <p>of the electronic message using character matching;</p> <p>(b3) flagging the attributes of the case model which are detected in the electronic message;</p> <p>(b4) comparing the flagged attributes of the case model with stored attributes of <b>stored case models</b> of the case base;</p> <p>(b5) comparing the text of the case model with stored text of the <b>stored case models</b> of the case base; and</p> <p>(b6) assigning a score to each <b>stored case model</b> which is compared with the case model, the score increasing when at least one of the attributes and the text match the <b>stored case model</b> and the score not increasing when at least one of the attributes and the text do not match the <b>stored case model</b>.</p> <p>31. The method of claim</p> |                          |                          |                      |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold   | Plaintiff's Construction                         | Defendants' Construction                          | Court's Construction |
|--|--|--|---|----------------------|
|  | <p>30, wherein:</p> <p>when at least one of the attributes and the text match the <b>stored case model</b>, the score is increased by a predetermined match weight; and</p> <p>when at least one of the attributes and the text does not match the <b>stored case model</b>, the score is decreased by a predetermined mismatch weight.</p> <p>33. The method of claim 31, wherein each score is normalized by dividing the score by a maximum possible score for the <b>stored case model</b>, where the maximum possible score is determined when all of the attributes and text of the case model and the <b>stored case model</b> match.</p> |  |   |                      |
| Predetermined Match Weight                                     | 31. The method of claim 30, wherein:   | A predetermined factor controlling the degree to | A predetermined factor which is added to a stored |                      |

| Claim Term/Phrase and Asserted Claim(s) Containing Term/Phrase | Claim Language with Disputed Terms in Bold   | Plaintiff's Construction   | Defendants' Construction   | Court's Construction |
|--|--|--|--|----------------------|
| (Claim 31)*  | <p>when at least one of the attributes and the text match the stored case model, the score is increased by a <b>predetermined match weight</b>; and</p> <p>when at least one of the attributes and the text does not match the stored case model, the score is decreased by a predetermined mismatch weight.</p>   | <p>which a stored case model's score is increased by a comparison of text and attributes from a case model with those from a stored case model.</p>  | <p>case model's match score when a feature from the stored case model matches text and attributes from the presented case model.</p>   |                      |
| Predetermined Mismatch Weight (Claim 31)*                      | <p>31. The method of claim 30, wherein:</p> <p>when at least one of the attributes and the text match the stored case model, the score is increased by a predetermined match weight; and</p> <p>when at least one of the attributes and the text does not match the stored case model, the score is decreased by a <b>predetermined mismatch weight</b>.</p> | <p>A predetermined factor controlling the degree to which a stored case model's score is decreased by a comparison of text and attributes from a case model with those from a stored case model.</p> | <p>A predetermined factor which is subtracted from a stored case model's match score when a feature from the stored case model does not match a feature from the presented case model.</p> |                      |

**ORDERING OF THE STEPS**

| <b>Claim Language</b>  | <b>Plaintiff's Proposal</b>                                 | <b>Defendants' Proposal</b>                              | <b>Court's Construction</b> |
|--|---|--|-----------------------------|
| <p>26. A method for automatically processing a non-interactive electronic message using a computer, comprising the steps of:</p> <p>(a) receiving the electronic message from a source;</p> <p>(b) interpreting the electronic message using a rule base and case base knowledge engine; and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source.</p> | <p>The steps of claim 26 may be performed in any order.</p> | <p>The steps of claim 26 must be performed in order.</p> |                             |

**INCORPORATION OF DEPENDANT CLAIM ELEMENTS**

| <b>Claim Language</b>  | <b>Plaintiff's Proposal</b>                    | <b>Google and AOL's Proposal</b>   | <b>Court's Construction</b> |
|--|--|--|-----------------------------|
| <p>26. A method for automatically processing a non-interactive electronic message using a computer, comprising the steps of:</p> | <p>Claims 28, 30, 31, and 33 are definite.</p> | <p>Claims 28, 30, 31, and 33 are indefinite because claim 28 does not properly incorporate the elements of claim 26.</p> |                             |



| <b>Claim Language</b>  | <b>Plaintiff's Proposal</b> | <b>Google and AOL's Proposal</b>  | <b>Court's Construction</b> |
|--|-----------------------------|---|-----------------------------|
| <p>(a) receiving the electronic message from a source;</p> <p>(b) interpreting the electronic message using a rule base and case base knowledge engine; and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source.</p> <p>28. The method of claim 26, further comprising the steps of:</p> <p>(b1) classifying the electronic message as at least one of (i) being able to be responded to automatically; and (ii) requiring assistance from a human operator; and</p> <p>(c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source when the classification step indicates that the electronic message can be responded to automatically.</p> <p>30. The method of claim 28, wherein the step of interpreting</p> |                             | <p>In addition, Claims 30, 31, and 33 are indefinite because claim 30 does not properly incorporate the elements of claim 28.</p> |                             |

| <b>Claim Language</b>  | <b>Plaintiff's Proposal</b> | <b>Google and AOL's Proposal</b> | <b>Court's Construction</b> |
|--|-----------------------------|----------------------------------|-----------------------------|
| <p>the electronic message further includes the steps of:</p> <p>(b1) producing a case model of the electronic message including (i) a set of attributes for identifying specific features of the electronic message; and (ii) message text;</p> <p>(b2) detecting at least one of text, combinations of text, and patterns of text of the electronic message using character matching;</p> <p>(b3) flagging the attributes of the case model which are detected in the electronic message;</p> <p>(b4) comparing the flagged attributes of the case model with stored attributes of stored case models of the case base;</p> <p>(b5) comparing the text of the case model with stored text of the stored case models of the case base; and</p> <p>(b6) assigning a score to each stored case model which is compared with the case model, the score increasing when at least one of the attributes and the text match the stored case model and the score not increasing when at least one of the attributes and the text do not</p> |                             |                                  |                             |

| <b>Claim Language</b>  | <b>Plaintiff's Proposal</b> | <b>Google and AOL's Proposal</b> | <b>Court's Construction</b> |
|--|-----------------------------|----------------------------------|-----------------------------|
| <p>match the stored case model.</p> <p>31. The method of claim 30, wherein:</p> <p>when at least one of the attributes and the text match the stored case model, the score is increased by a predetermined match weight; and</p> <p>when at least one of the attributes and the text does not match the stored case model, the score is decreased by a predetermined mismatch weight.</p> <p>33. The method of claim 31, wherein each score is normalized by dividing the score by a maximum possible score for the stored case model, where the maximum possible score is determined when all of the attributes and text of the case model and the stored case model match.</p> |                             |                                  |                             |

Date: March 22, 2010

Respectfully submitted,

By: /s/ David A. Perlson

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**Attorneys for Defendant Yahoo!**

## **CERTIFICATE OF SERVICE**

I hereby certify that the following counsel of record who are deemed to have consented to electronic service are being served on March 22, 2010, with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served by first class U.S. mail on this same date.

By: /s/ \_\_\_\_\_  
Todd Kennedy