

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

_____)	
I/P ENGINE, INC.,)	
)	
	Plaintiff,)	
	v.)	Civ. Action No. 2:11-cv-512
)	
AOL, INC. et al.,)	
)	
	Defendants.)	
_____)	

I/P ENGINE’S OPENING CLAIM CONSTRUCTION BRIEF

Dated: April 12, 2012

Donald C. Schultz (Virginia Bar No. 30531)
W. Ryan Snow (Virginia Bar No. 47423)
CRENSHAW, WARE & MARTIN PLC
150 West Main Street
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735

Jeffrey K. Sherwood (Virginia Bar No. 19222)
Frank C. Cimino, Jr.
Kenneth W. Brothers
Leslie Jacobs
Charles J. Monterio, Jr.
Jonathan L. Falkler
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

Counsel for Plaintiff I/P Engine, Inc.

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. THE PATENTS-IN-SUIT 3

III. LEGAL STANDARD AND IMPORTANT CLAIM CONSTRUCTION PRINCIPLES 6

 A. Claim Language 7

 B. The Specification 7

 C. The Prosecution History 8

 D. Extrinsic Evidence 8

 E. Other Principles Relevant to Construing the Lang/Kosak Patents 9

IV. AGREED-UPON CLAIM TERMS 11

V. DISPUTED CLAIM TERMS 11

 A. “scanning a network” 11

 B. “scanning system” 14

 C. “[informons/information] relevant to a query” 16

 D. “combining” 17

 E. “demand search” 21

 F. “collaborative feedback data” 22

 G. “[feedback system for] receiving information found to be relevant to the query by other users” 23

 H. Order of Method Limitations 24

 I. Different Systems 26

 J. Antecedent Basis 27

VI. CONCLUSION 29

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>ActiveVideo Networks, Inc. v. Verizon Communications Inc.</i> , 801 F.Supp.2d 465 (E.D. Va. 2011)	12, 18
<i>ACTV, Inc. v. Walt Disney Co.</i> , 346 F.3d 1082 (Fed. Cir. 2003).....	14
<i>Altiris, Inc. v. Symantec Corp.</i> , 318 F.3d 1363 (Fed. Cir. 2003).....	24, 25
<i>Applied Material, Inc. v. Tokyo Seimitsu, Co., Ltd.</i> , 446 F.Supp. 2d 525 (E.D. Va. 2006)	9
<i>Exxon Research & Eng'g Co. v. United States</i> , 265 F.3d 1371 (Fed. Cir. 2001).....	10
<i>Haemonetics Corp. v. Baxter Healthcare Corp.</i> , 607 F.3d 776 (Fed. Cir. 2010).....	10, 13
<i>Interactive Gift Express, Inc. v. Compuserve Inc.</i> , 256 F.3d 1323 (Fed. Cir. 2001).....	10, 24, 25
<i>Inverness Med. Switz. GmbH v. Warner Lambert Co.</i> , 309 F.3d 1373 (Fed. Cir. 2002).....	9, 14
<i>IPXL Holdings, L.L.C. v. Amazon.com, Inc.</i> , 430 F.3d 1377 (Fed. Cir. 2005).....	10
<i>Liebel-Flarsheim Co. v. Medrad, Inc.</i> , 358 F.3d 898 (Fed. Cir. 2004).....	8, 9, 15
<i>Markman v. Westview Instruments, Inc.</i> , 517 U.S. 370 (1996).....	6
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995), <i>aff'd</i> 517 U.S. 370 (1996)	7
<i>Marley Mouldings, Ltd. v. Mikron Indus., Inc.</i> , 417 F.3d 1356 (Fed. Cir. 2005).....	11

<i>Personalized User Model LLP v. Google Inc.</i> , 2012 WL 295048 (D. Del. January 25, 2012).....	28, 29
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	passim
<i>Retractable Tech. Inc. v. Becton, Dickinson and Co.</i> , 653 F.3d 1296 (Fed. Cir. 2011).....	26
<i>SmithKline Beecham Corp. v. Apotex Corp.</i> , 403 F.3d 1331 (Fed. Cir. 2005).....	11
<i>Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.</i> , 537 F.3d 1357 (Fed. Cir. 2008).....	10
<i>Superguide Corp. v. DirecTV Enterprises, Inc.</i> , 358 F.3d 870 (Fed. Cir. 2004).....	8, 14
<i>U.S. Surgical Corp. v. Ethicon Inc.</i> , 103 F.3d 1554 (Fed. Cir. 1997).....	10
<i>Ventana Med. Sys., Inc. v. Biogenex Labs., Inc.</i> , 473 F.3d 1173 (Fed. Cir. 2006).....	10
<i>Vitronics Corp. v. Conceptoronic, Inc.</i> , 90 F.3d 1576 (Fed. Cir. 1996).....	passim
<i>W.L. Gore & Associates, Inc. v. Medtronic, Inc.</i> , --- F.Supp.2d ---, 2011 WL 6256982 (E.D. Va. December 14, 2011).....	15
<u>Statutes</u>	
35 U.S.C. § 112.....	8
35 U.S.C. § 282.....	10

I. INTRODUCTION AND SUMMARY

Plaintiff I/P Engine, Inc. (“I/P Engine”) alleges that Defendants, AOL, Inc., Google Inc., IAC Search and Media, Inc., Gannett Company, Inc., and Target Corporation (collectively “Defendants”) infringe certain claims of U.S. Patent Nos. 6,314,420 (“the ‘420 patent”) and 6,775,664 (“the ‘664 patent”) (collectively, “the Lang/Kosak patents”). The U.S. Patent and Trademark Office awarded these patents to Mr. Andrew Kennedy Lang, I/P Engine’s President, and Mr. Donald Kosak, an I/P Engine technical consultant. At the time, Messrs. Lang and Kosak worked for Lycos, Inc., the original assignee and the prior owner of the patents. The Lang/Kosak patents teach innovative search engine techniques that provide high-quality search results by combining content-based data with collaborative feedback data from other users to optimally satisfy a user’s need for information as that need is reflected in a “one-time demand” search request. The Lang/Kosak patents describe how a search engine may facilitate the claimed method of identifying items of potential interest to a user by looking for such items on two or more connected computers.

I/P Engine accuses each of the Defendants of creating and using an infringing apparatus, and using an infringing method, to find and present the most relevant advertisements to users of their search engines, which is how some of the Defendants generate substantially all of their revenue. The ‘664 patent, for example, specifically claims that the invention is applicable to filtering advertisements as well as other forms of information. Beginning in 2005, Defendant Google, Inc. (“Google”) revamped its search advertising system to practice the inventions first described in the Lang/Kosak patents. The revamped Google system presents advertisements to users based on a combination of content filtering for the advertisements and collaborative feedback data that Google collects from other users. Using the patented apparatus and methods, Google has earned billions of dollars in revenue. I/P Engine accuses each of the other

defendants of infringement by similar theories, at least in part because all Defendants use the Google system.

Pursuant to the Court's Rule 16(b) Scheduling Order, I/P Engine presents its disputed ten claim terms for construction. In construing these terms, I/P Engine is guided by the application of straightforward claim construction principles, focusing on the intrinsic evidence. By way of example, in interpreting the term "scanning a network," I/P Engine offers a construction grounded in the plain and ordinary meaning of the term to one of ordinary skill in the art, and fully consistent with the intrinsic evidence. That evidence shows that "scanning a network" should be construed as "looking for items on two or more connected computers." In contrast, Defendants' approach to claim construction is opportunistic, inconsistent, and result-oriented. For example, Defendants propose that "scanning a network" means "spidering or crawling." But to do so, they violate one of the most fundamental safeguards against improperly narrowing a patent: reading the specification's preferred embodiment directly into the claim without any justification. The Court should reject this litigation-inspired claim construction technique.

The difference in the parties' approaches to construing the other terms is similar. I/P Engine interprets these terms in accordance with their plain and ordinary meaning, in the context of and consistent with the specification and the prosecution history, whereas Defendants cherry-pick their arguments to try to avoid infringement, or support their purported invalidity contentions.¹

¹ As set forth in I/P Engine's March 21, 2012 Motion to Compel Defendants' Compliance with this Court's Scheduling Order, or Alternatively, Motion for Protective Order, I/P Engine proposed four limitations to be construed, while Defendants improperly grouped claim phrases, calling them "issues" instead of identifying discrete terms, to have the Court consider more than ten terms. Defendants also have failed to disclose their evidence supporting some of their interpretations, as required by the Scheduling Order. The appropriate remedy for Defendants'

II. THE PATENTS-IN-SUIT

The '420 and '664 patents both claim priority to the same parent patent, U.S. Patent No. 5,867,799 (“the ‘799 patent”). Ex. 1 at col. 1, ll. 4-7; Ex. 2 at col. 1, ll. 6-16. In the ‘799 patent, which was filed on April 4, 1996, during the early development years of the internet, inventors Messrs. Lang and Kosak described a novel way of filtering information such as news articles by combining: (a) a content-based analysis that considers how well an item matches a user’s profile, with (b) a collaborative-based analysis that considers feedback received from other users with the same interests or information needs. As described in the ‘799 patent, this combination of “content filtering” and “collaborative filtering” provided results that were superior to those provided by systems that used either content filtering or collaborative filtering, but did not combine the two. Ex. 3 at col. 2, l. 23 – col. 3, l. 53 and col. 8, ll. 13-42. The ‘799 patent extensively describes the various ways to integrate these two techniques.

The “relevance” of an informon is broadly described as how well it satisfies the user’s information need. *Id.* at col. 4, ll. 5-6. Content-based filtering is a process of determining relevance by extracting features such as text from an informon (or information item).² *Id.* at col. 4, ll. 23-26. Collaborative filtering, on the other hand, determines relevance based on feedback from other users—it looks to what items other users with similar interests or needs found to be relevant. *Id.* at col. 4, ll. 26-29 and 36-37.

There are numerous types of collaborative feedback data that can be used. For example, users can actively sort items either on a best/worst scale or on a worst/best scale, or using various

failure to comply with the Scheduling Order is to disregard those proposed constructions that violate the Scheduling Order.

² “Informon” is a unique term coined by the inventors and is defined in the specification. The parties agree that it means “information entities of potential or actual interest to an [individual/first] user.”

quantitative methods to rank the items, as appropriate, to reflect his level of enjoyment of the items. As another alternative, collaborative feedback can be developed passively (what the inventors called “passive feedback data”) by monitoring a user’s choice of items to read (for example, by tracking click-through data), or by monitoring the time users spent on an item. *Id.* at col. 24, ll. 49-58; col. 7, ll. 51-52.

In 1998, Messrs. Lang and Kosak filed the ‘420 and ‘664 patents, which are a continuation-in-part application and continuation application, respectively, each claiming priority to the ‘799 patent. These patents take some of the core ideas of the ‘799 patent, move them away from profile systems, and apply them to search engine systems. In this nascent search engine environment that Messrs. Lang and Kosak envisioned, the content analysis evaluates how well an item satisfies a user’s query, and the collaborative analysis evaluates feedback received from other users that previously searched using the same query. By then combining these two data sets to filter search engine results, Messrs. Lang and Kosak applied the principles disclosed in their ‘799 patent relating to profile systems to the fledgling search engine industry.³

More specifically, the specification of the ‘420 and ‘664 patents describes an information processing system, e.g., a search engine system, especially adapted to make searches for what the inventors called “informons” (i.e., information entities such as news articles, websites, or advertisements). *Id.* at col. 24, ll. 27-31. Importantly, the specification describes how the search engine information processing system filters informons for relevance to a query using both content-based data and collaborative feedback data. *Id.*

³ Google, for example, was founded in September 1998.

FIG. 9 of the '420 patent (reproduced below) illustrates a sample embodiment of the invention at issue in this case.⁴ When a user 34C enters a query into the information processing system, the system searches for informons. *Id.* at col. 25, ll. 6-18.

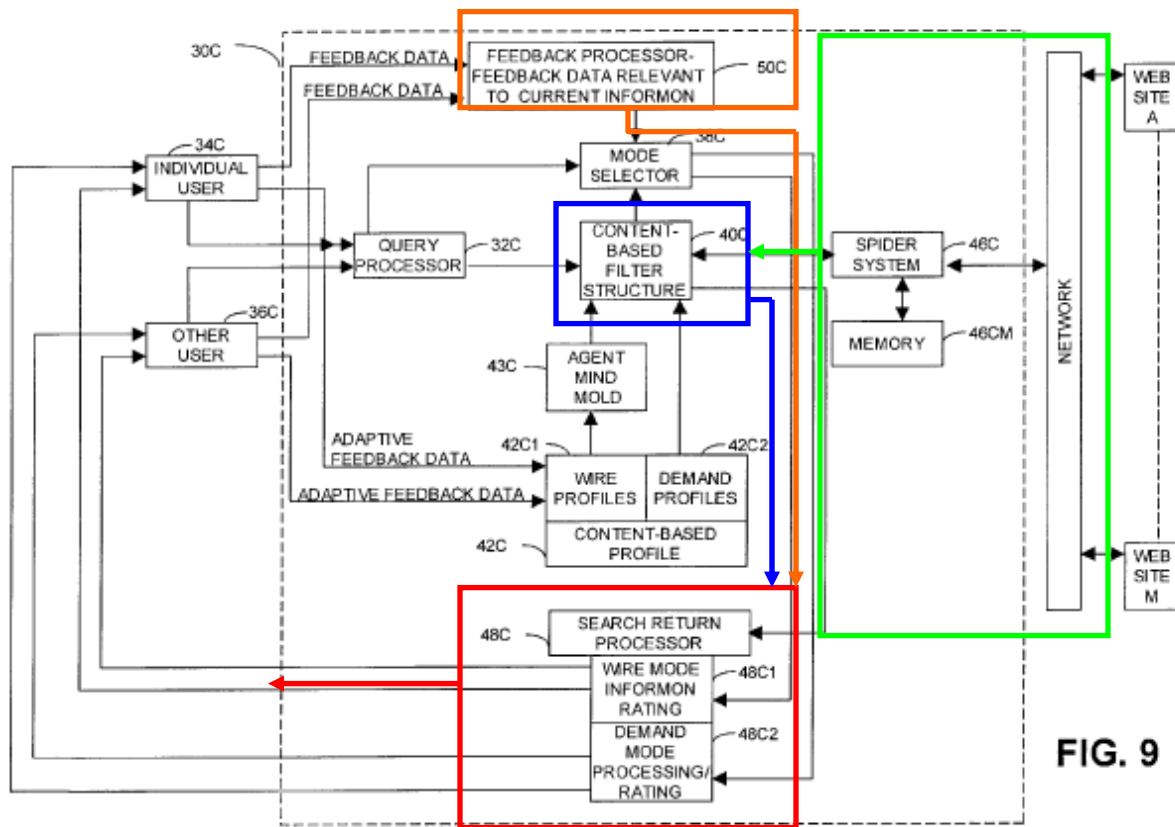


FIG. 9

The Lang/Kosak patents teach that the informons can be found on any type of network that contains information or data to be searched. The specification provides three examples of such networks: (a) the internet, (b) an enterprise-wide network (sometimes called an wide area network), or (c) an “intranet” (sometimes called a local area network). *Id.* at col. 6, ll. 41-49.

Thus, the claimed information processing system can be used to search everything from

⁴ The specification describes embodiments directed to both “demand” searches from individual users, as well as “wire” searches, which are recurring searches from a pre-defined list of terms or concepts. *See, e.g., id.* at col. 23, l. 44 – col. 26, l. 51. The claims at issue in this litigation are directed to the “demand” search embodiments.

webpages on the internet to company documents on a corporate network or advertisements located in a networked database.

In the FIG. 9 embodiment, the system scans a network 44C (annotated in green) to collect the informons that will be searched. *Id.* at col. 25, ll. 39-41. Importantly, the process of collecting informons may be performed well in advance of the demand search by a user. *Id.* at col. 25, ll. 45-52. As shown in FIG. 9, the system can include a database (e.g., memory system 46CM) where an index of previously collected informons are stored—in other words, a database or library of information. *Id.* By this means, the search engine system can retrieve the informons quickly and efficiently.

When a search query is received from a user, the content-based filter structure 40C (annotated in blue) obtains relevant informons from the database and passes them to search return processor 48C (annotated in red). *Id.* at col. 25, ll. 53-57. The search return processor *combines* content-based filtering data about the informons (received from the content-based filter structure 40C) with collaborative feedback rating data about the informons (received from users through a feedback processor 50C) (annotated in orange) in the demand search mode. *Id.* at col. 25, ll. 57-61 (emphasis added). By combining the two sets of data, the search return processor 48C calculates a rating predictor for each informon in measuring it for relevancy to the query. *Id.* at col. 14, ll. 40-67. The search results are returned to the users 34C and 36C from the search return processor 48C. *Id.* at col. 26, ll. 5-7.

III. LEGAL STANDARD AND IMPORTANT CLAIM CONSTRUCTION PRINCIPLES

Claim construction is “a question of law, to be determined by the court.” *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384 (1996). Claim construction begins with determining how a person of ordinary skill in the art understands a claim term as of the filing

date of the patent application. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). In construing claims, this Court must look first to the intrinsic evidence in the record, i.e., the claims, the specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995), *aff'd* 517 U.S. 370 (1996). In the unlikely event that the intrinsic evidence is insufficient to determine the acquired meaning of the claim language, this Court may rely on extrinsic evidence, i.e., dictionaries, treatises, publications, and expert testimony. *See id.*; *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1585 (Fed. Cir. 1996).

A. Claim Language

This Court's claim construction analysis must begin with the words of the claim. "[T]he words of a claim 'are generally given their ordinary and customary meaning' . . . the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips*, 415 F.3d at 1312-13 (quoting *Vitronics*, 90 F.3d at 1582). This ordinary meaning "may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Phillips*, 415 F.3d at 1313. In analyzing the claim language, the court must analyze the context in which the term appears and the other claims of the patent to gain insight on the patentee's intention for the claim definition. "Because claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims." *Id.* at 1314. If the meaning of a term is not immediately apparent, courts must look to the written description and prosecution history to provide guidance as to the meaning of the claim terms. *Id.*

B. The Specification

The specification contains a written description of the invention, the manner and process of making and using it, and the best mode contemplated by the inventor of carrying it out. *See*

35 U.S.C. § 112. “[It] is always necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning.” *Vitronics*, 90 F.3d at 1582; *see Phillips*, 415 F.3d at 1315. There is a distinction between using the specification to analyze claim terms, however, and incorporating limitations from the specification into the claim language. *See Phillips*, 415 F.3d at 1323; *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 904 (Fed. Cir. 2004). “Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim.” *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004).

C. The Prosecution History

The prosecution history may be useful in determining how the inventor understood the patent and invention, and may provide evidence that the inventor limited the invention during the course of prosecution, thus restricting the scope of the claim language. *Phillips*, 415 F.3d at 1317. A court should not rely too heavily on the prosecution history, however, because it “represents an ongoing negotiation between the U.S. Patent and Trademark Office (“PTO”) and the applicant, rather than the final product of that negotiation, [such that] it often lacks the clarity of the specification and thus is less useful for claim construction purposes.” *Id.*

D. Extrinsic Evidence

A court may also consider extrinsic evidence, “which consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.” *Phillips*, 415 F.3d at 1317-19 (quoting *Markman*, 52 F.3d at 980). Extrinsic evidence should not be used “to contradict claim meaning that is unambiguous in light of the intrinsic evidence.” *Id.* at 1324. “While the [*Phillips*] court cautioned against using dictionaries as the primary method of construing claims, [it] did not preclude the use of dictionaries.”

Applied Material, Inc. v. Tokyo Seimitsu, Co., Ltd., 446 F.Supp. 2d 525, 530 (E.D. Va. 2006).

“Instead the *Phillips* court reiterated the holding in *Vitronics*: ‘[j]udges are free to consult such resources at any time in order to better understand the underlying technology and may also rely on dictionary definitions when construing claim terms, so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents.’” *Id.* (quoting *Phillips*, 415 F.3d at 1322-23).

E. Other Principles Relevant to Construing the Lang/Kosak Patents

In view of some of Defendants’ proposed constructions, I/P Engine highlights a few principles that are particularly important to resolution of several of the parties’ claim construction disputes.

Embodiments do not limit a claim. It is improper to import limitations from embodiments disclosed in the specification to limit or otherwise vary the plain meaning of the claim language. “It is improper to limit the claim based on a preferred embodiment of the invention.” *Inverness Med. Switz. GmbH v. Warner Lambert Co.*, 309 F.3d 1373, 1379 (Fed. Cir. 2002); see *Liebel-Flarsheim*, 358 F.3d at 906 at 913 (“[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.”).

Claim differentiation. Other claims in the patent can be valuable sources of enlightenment as to the meaning of a claim term. *Vitronics*, 90 F.3d at 1582. Differences among claims can be a useful guide in understanding the meaning of particular claim terms. For example, the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim. *Liebel-Flarsheim*, 358 F.3d at 910.

Disclaimer. Disclaimer of subject matter from a patent's claim scope is an extraordinary action and exists only when it is clear and unequivocal. *See, e.g., Ventana Med. Sys., Inc. v. Biogenex Labs., Inc.*, 473 F.3d 1173, 1180-81 (Fed. Cir. 2006).

Ordering of method claims. Claim 25 of the '420 patent and claim 26 of the '664 patent are independent method claims, which each set forth several claimed elements. Those elements are set forth in a list preceded by the verb "comprising." The Federal Circuit has made clear that, in most cases, the steps of a method need not be performed in the order in which they are recited. *Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1342 (Fed. Cir. 2001).

Indefiniteness. A patent enjoys a presumption of validity, which can be overcome only through facts supported by clear and convincing evidence. *See* 35 U.S.C. § 282; *U.S. Surgical Corp. v. Ethicon Inc.*, 103 F.3d 1554, 1563 (Fed. Cir. 1997). Indefiniteness is a question of law, and a claim is indefinite only "if it does not reasonably apprise those skilled in the art of its scope." *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377, 1380, 1383-84 (Fed. Cir. 2005). To prove indefiniteness, the claims must not be amenable to construction. *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 537 F.3d 1357, 1371 (Fed. Cir. 2008). Claims not amenable to construction are those that are "insolubly ambiguous." *Haemonetics Corp. v. Baxter Healthcare Corp.*, 607 F.3d 776, 783 (Fed. Cir. 2010).

If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable minds will disagree, a claim is sufficiently clear on indefiniteness grounds. *Exxon Research & Eng'g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001). Close questions of indefiniteness should be resolved in favor of the patentee. *Id.* at 1380. Indefiniteness "does not depend on a potential infringer's ability to

ascertain the nature of its own accused product to determine infringement, but instead on whether the claim delineates to a skilled artisan the bounds of the invention.” *SmithKline Beecham Corp. v. Apotex Corp.*, 403 F.3d 1331, 1340-41 (Fed. Cir. 2005). Definiteness is likely if the relevant values can be “calculated or measured.” *See Marley Mouldings, Ltd. v. Mikron Indus., Inc.*, 417 F.3d 1356, 1360 (Fed. Cir. 2005).

IV. AGREED-UPON CLAIM TERMS

The parties have agreed upon the definitions of the following claim terms:

- A. **“query”** means “request for search results.”
- B. **“informons”** means “information entities of potential or actual interest to an [individual/first] user.”
- C. **“user”** means “an individual in communication with [the/a] network.”
- D. **“relevance”** means “how well an informon satisfies the [individual/first] user’s information need in the query.”

V. DISPUTED CLAIM TERMS

A. “scanning a network”

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
looking for items on two or more connected computers	spider[ing] or crawl[ing] a network

As shown below, I/P Engine’s proposed construction of “scanning a network” flows directly from the intrinsic evidence. The phrase is made up of two familiar and readily understandable English words, “scanning” and “network,” both of which have widely accepted meanings.

The first step in claim construction is analysis of the words of the claims themselves. “[T]he words of a claim ‘are generally given their ordinary and customary meaning’ . . . the meaning that the term would have to a person of ordinary skill in the art in question at the time of

the invention.” *Phillips*, 415 F.3d at 1312-13 (quoting *Vitronics*, 90 F.3d at 1582). This ordinary meaning “may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.” *Phillips*, 415 F.3d at 1313. That is exactly the case here. The plain and ordinary meaning of “scanning” is “looking for items.”⁵ For example, if someone is “scanning” the beach for a particular beach umbrella, or scanning a document for a particular word, they are “looking” for those items. The plain and ordinary meaning of “network” is two or more connected computers.⁶ A single computer would never ordinarily be considered a “network;” instead, the widely accepted meaning of “network” is a set of computers that communicate and talk to each other. Putting the ordinary meaning of these two commonly understood words together, the plain and ordinary meaning of the entire phrase “scanning a network” becomes “looking for items on two or more connected computers.”

⁵ “Dictionary definitions provide evidence of a claim term’s ‘ordinary meaning.’” *ActiveVideo Networks, Inc. v. Verizon Communications Inc.*, 801 F.Supp.2d 465, 482 (E.D. Va. 2011) (citations omitted). See, e.g., Ex. 4, *Merriam-Webster’s Collegiate Dictionary*, 10th ed., 1998 (“Scan – ...2: to examine by point-by-point observation or checking, to investigate thoroughly by checking point by point and often repeatedly, to glance from point to point of often hastily, casually, or in search of a particular item”); Ex. 5, *The Computer Desktop Encyclopedia*, 2d ed., 1999, (“Scan – (3) to sequentially search a file); and Ex. 6, *Academic Press Dictionary of Science and Technology*, 1992, (“Scan - Computer Technology. 1. to examine sequentially each item in a list, each record in a file, each point of a display, or each input or output channel of a communication link.”). (citations and quotations omitted). I/P Engine captures the ordinary meaning of “scanning” in a single easily understood phrase—“looking for items.”

⁶ See, e.g., Ex. 7, *Dictionary of Computer and Internet Terms*, 6th ed., 1998 (“Network – a set of computers connected together.”); Ex. 8, *The Computer Glossary*, 8th ed., 1998 (“Network – 1) an arrangement of objects that are interconnected”); Ex. 9, *Dictionary of Communications Technology*, 2d ed., 1995 (“Network – 5. A group of computers connected together to facilitate the transfer of information”); and Ex. 5, *The Computer Desktop Encyclopedia*, 2d ed., 1999 (“Network – (1) An arrangement of objects that are interconnected”).

Next, the Court must “review the specification to determine whether the inventor has used [“scanning a network”] in a manner inconsistent with [its] ordinary meaning.” *Vitronics*, 90 F.3d at 1582; *see Phillips*, 415 F.3d at 1315. Quite the contrary, the specification uses the term “scanning a network” exactly in accordance with its plain meaning, and therefore confirms I/P Engine’s proposed construction. For example, the specification describes an embodiment using a spider system that “scans a network ... to find informons for a current demand search.” Ex. 1 at col. 25, ll. 39-40. That spider system is “looking” on a network for informons for a demand search. Thus, the embodiment teaches that scanning means looking. The specification explicitly uses “network” in its broadest sense to be any connection of two or more computers: “[i]n general, a data stream is conveyed through network 3, which can be a global internetnetwork. A skilled artisan would recognize that apparatus 1 can be used with other types of networks, including, for example, an enterprise-wide network, or ‘intranet.’” *Id.* at col. 6, ll. 40-45. The phrase “scanning a network,” therefore is easily construed using the well established rules of construction.

Defendants initially proposed that the term “scanning a network” is indefinite and now contend it means “spidering or crawling a network.”⁷ A finding of indefiniteness is only appropriate if the claims are not amenable to construction and are “insolubly ambiguous.” *Haemonetics Corp.*, 607 F.3d at 783. As shown above, “scanning a network” is not insolubly ambiguous—it is in fact readily construable. Even Defendants’ own alternative proposal proves that the phrase is not insolubly ambiguous, as they proposed a definition.

⁷ In Defendants’ March 21, 2012 disclosure of proposed constructions, Defendants failed to offer this construction, or anything like it, and did not cite any supporting evidence. Last week, on April 5, 2012, Defendants proposed a definition for “scanning a network.” This late position change violates the Court’s Scheduling Order on exchange of constructions and supporting evidence. The Court should not consider Defendants’ untimely construction.

Defendants’ “spidering” proposal violates the well established tenet of patent law and claim construction that prohibits the specification’s preferred embodiments or examples from being read into the claim. Although the specification describes “spidering” or “crawling” as examples of how “scanning a network” could be accomplished, the claim language is deliberately broader, using only the word “scanning.” Nowhere does the specification or the claims equate the word “scanning” with “spidering” or “crawling.” Accordingly, Defendants’ attempt to limit “scanning” solely to a spider or a webcrawler is impermissible and must be rejected. *See, e.g., Superguide*, 358 F.3d at 875 (“Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim.”); *Inverness*, 309 F.3d at 1379 (“It is improper to limit the claim based on a preferred embodiment of the invention.”).

B. “scanning system”

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
a system used to search for information	a system used to scan a network

The “scanning system” appears in a limitation in claim 1 of the ‘664 patent: “a scanning system for searching for information relevant to a query.” Ex. 2, col. 27, ll. 28. The definition of “scanning system” flows directly from that surrounding claim language. *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed. Cir. 2003) (“the context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning of those terms”). The contextual claim limitation expressly states that the “scanning system” is used to “search[] for information” relevant to a query. That is all that is required to construe “scanning system” because “the claims themselves provide substantial guidance as to the meaning of particular claim terms.” *Phillips*, 415 F.3d at 1314.

Defendants again initially asserted an indefiniteness argument, contending that scanning system is indefinite. As with “scanning a network,” Defendants later disclosed an alternative construction but provided no evidence.⁸ Because “scanning system” is readily defined using the language of the claim itself, it cannot be “insolubly ambiguous”—Defendants own alternative construction again belies their initial argument.

Even if the Court were to consider Defendants’ current definition, it should be rejected because it improperly reads limitations into the claim by requiring the system to be “used to scan a network.” First, there is no basis for Defendants’ requirement that the “scan” be of a “network.” The claim requires the scanning system to “search for information relevant to the query,” and it does not dictate where the search takes place. Second, Defendants proposal violates the doctrine of claim differentiation.⁹ Here, dependent claim 24 recites a further limitation on the scanning system, requiring it to “scan a network”: “the scanning system further comprises *scanning a network* upon a demand search request” (emphasis added). Ex. 2 at col. 28, ll. 49-51. The presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim. *Liebel-Flarsheim*, 358 F.3d at 910 (“where the limitation that is sought to be ‘read into’ an independent claim already appears in a dependent claim, the doctrine of claim differentiation is at its strongest”). Because dependent claim 24 adds the limitation of “scanning the network” to the

⁸ The Court should reject Defendants’ untimely alternative construction because, like the prior claim term, it is offered in violation of the Court’s Scheduling Order.

⁹ “The doctrine of claim differentiation provides that each claim is different in scope and is based on ‘the common sense notion that different words or phrases used in separate claims are presumed to indicate that the claims have different meanings and scope.’” *W.L. Gore & Associates, Inc. v. Medtronic, Inc.*, --- F.Supp.2d ---, 2011 WL 6256982, at *10 (E.D. Va. December 14, 2011) (quoting *Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1369 (Fed. Cir. 2007)). “Claim differentiation creates a presumption that the difference between claim language is significant and that the Court should not construe terms in such a way as to render the language of a claim superfluous.” *Id.* (citing *Phillips*, 415 F.3d at 1315).

“scanning system,” the proper construction of the scanning system in claim 1 cannot include that dependent limitation. Defendants’ attempt to read the “scanning the network” limitation into the independent claim renders the dependent claim meaningless, violating the doctrine of claim differentiation and therefore must be rejected.

C. “[informons/information] relevant to a query”

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
[informons/information] having relevance to a query	[informons/information] that satisfy the individual user’s information need expressed in the query

The dispute centers on the meaning of “relevant” in this claim limitation. The specification explicitly defines the word “relevance”: “[t]he ‘relevance’ of a particular informon broadly describes how well it satisfies the user’s information need.” Ex. 1 at col. 4, ll. 5-6. The parties agreed that the claim term “relevance” means “how well an informon satisfies the [individual/first] user’s information need.” This agreement necessarily resolves the dispute over the meaning of “relevant.” “Relevance” and “relevant” have the same Latin root— they are different grammatical vehicles for conveying the same concept. This interrelationship is demonstrated by the fact that “relevant” is an adjective, while “relevance” is a noun. Thus the phrase “a relevant document” demonstrates an adjectival use, modifying the noun “document,” while the phrase “the document has relevance” demonstrates use as a noun where “relevance” is modifying the condition of the document. Fundamentally then, an item is relevant if it possesses the attribute of relevance.

Put differently, the agreed definition of “relevance” (“how well” an item satisfies a user’s need) reflects a continuum in which some items better satisfy a user’s information need than other items. Both in daily life and even in the courtroom, we have the same usage for the word “relevant”—thus an item may be “extremely” relevant or, at the other end, “marginally” or

“hardly” relevant. And in evidentiary rulings, courts frequently embrace this very usage, refusing to exclude evidence of marginal relevance by commenting that if something is marginally relevant, that “goes to the weight of the evidence” and should not be excluded on the grounds that it is arguably less relevant than another piece of evidence. The Lang/Kosak patents embrace this same common usage and reflect that information items or informons may be more or less relevant, depending upon how well they satisfy the user’s information need.

Strangely, Defendants agree on the meaning of “relevance,” but dispute the meaning of “relevant.” Their construction rejects the idea that “relevant” is a continuum. According to Defendants, “relevant” apparently means the item absolutely satisfies the user’s information need; an item is either 100% relevant or 0% relevant/irrelevant. This concept is belied by the intrinsic evidence, by common sense, and by Defendants’ own acceptance of the construction of relevance, which demonstrates that some items are more *relevant* than others. To the extent the Court deems a construction necessary, I/P Engine proposes that the term “relevant” be simply defined as “having relevance,” consistent with the agreed definition of “relevance.”

D. “combining”

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
uniting into a single number or expression	plain meaning; alternatively, bringing together

This claim term appears in each of the asserted independent claims: claim 10 of the ‘420 patent recites “[a] filter system combining pertaining feedback data from the feedback system with the content profile data”; claim 25 of the ‘420 patent recites “combining pertaining feedback data with the content profile data”; claim 1 of the ‘664 patent recites “a content-based filter system for combining the information from the feedback system with the information from the scanning system”; and claim 26 of the ‘664 patent recites “combining the information found

to be relevant to the query by other users with the searched information.” In all cases, the information to be “combined” is 1) content data and 2) feedback data.

I/P Engine’s proposed definition of “combining”—“uniting into a single number or expression”—is based on the intrinsic evidence, including the plain and ordinary meaning of the claim language itself, and the specification’s use of the term to describe the invention.

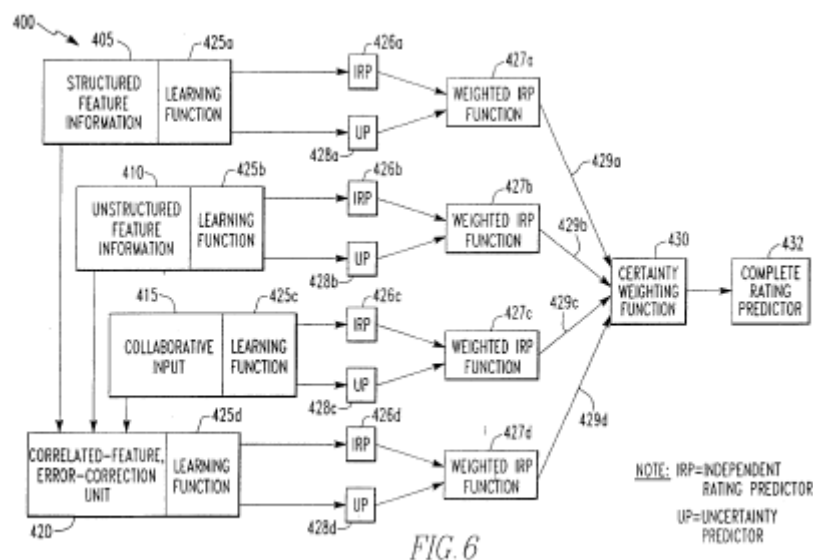
First, as always, the Court must start with the claim itself. The claim term “combined” is a commonly understood word and therefore the first step in the construction analysis for “combining” involves “the application of [its] widely accepted meaning.” *Phillips*, 415 F.3d at 1313. The widely accepted meaning of “combined” at the time of the invention was “to bring into such close relationship as to obscure individual characters; merge” or “uniting into a single number or expression.”¹⁰ In its ordinary usage, “combining” two things means that the individual pieces are united or merged in a way to obscure individual characters or into a single number or expression. This usage of “combined” also is confirmed by the contextual claim language. *See Vitronics*, 90 F.3d at 1582 (“the context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning of those terms”). In every instance that the claim term is used in the asserted independent claims, it is for the purpose of uniting the data into a single number or expression. For example, in claim 10, the system is described as “combining” (a) pertaining feedback data and (b) content profile data. The “combined” data is used “in filtering” the items. Accordingly, I/P Engine’s proposed

¹⁰ “Dictionary definitions provide evidence of a claim term’s ‘ordinary meaning.’” *ActiveVideo*, 801 F.Supp.2d at 482; *see, e.g., Ex. 4, Merriam-Webster’s Collegiate Dictionary*, 10th ed., 1998 (emphasis added) “*combining* – 1: a. to bring into such close relationship as to obscure individual characters: merge b. to cause to unite into a chemical compound, c. to unite into a single number or expression, 3: to possess in combination, a. to become one, b. to unite to form a chemical bond.”

construction finds direct support in the claim language—both the ordinary and customary meaning of “combined” and surrounding, contextual claim language.

Second, the specification uses the term “combined” consistently with its plain and ordinary meaning of uniting into a single number or expression. Specifically, the specification extensively describes how to “combine” the content data with the feedback data by uniting that data into a single number or expression using a number of alternative methods ranging from a “simple, weighted, additive” function to a “complex neural network function” to determine relevance to a query. The specification discloses FIG. 6 to describe the “combining” aspect of the invention: “[an] informon rating system which is like that of FIG. 6 . . . *combines* content-based filtering data with collaborative feedback rating data.” Ex. 1 at col. 25, ll. 56-59 (emphasis added).

Referring to FIG. 6, illustrated below, the specification describes taking content and collaborative data (computed as ratings based on content and collaborative data, respectively) and uniting them together using a weighted mathematical combination function to arrive at a new number or expression, the Complete Rating Predictor. Ex. 1 at col. 14, ll. 40-67.



The informon rating structure of FIG. 6 accepts content data (Structured Feature Information (405) and Unstructured Feature Information (410)) and collaborative data (Collaborative Input (415)). Ex. 1 at col. 14, ll. 41-45. These pieces of data are “combined” via certain functions into a “Complete Rating Predictor” (432) that, as shown above, is based on unitizing the collaborative data and the content data. *See, e.g.*, Ex. 1 at col. 14, ll. 49-67. The specification explains that the various pieces of data are “combined” using a “combination function” that can range from a “simple, weighted, additive” function to a “complex neural network function”:

“Each weighted IRP 429a-d is brought together with other IRPs 429a-d in a combination function 427a-d. This combination function 427a-d can be from a simple, weighted, additive function to a far more complex neural network function.

Ex. 1 at col. 14, ll. 56-60. As shown in FIG 6, the result of the combination functions is the Complete Rating Predictor, which is a new, single number or expression based on the inputted data. Thus, the specification describes the invention’s “combining” of content and collaborative data in a way that confirms I/P Engine’s proposal that “combining” means “uniting [the content and collaborative data] into a single number or expression.”

Defendants again initially took the position that “combining” is indefinite and then abandoned that position. This Court should give no consideration to Defendants’ current proposal because it fails to comply with the Scheduling Order.¹¹ In any event, Defendants’ fallback proposal (“bringing together”) is not supported by the intrinsic evidence, and is not even a form of “combining” at all. Items can be “brought together” without combining them, for

¹¹ Defendants just last week proposed a definition to this term that they previously argued was indefinite. Again, I/P Engine still does not have the evidence Defendants intend to rely upon for their definition, as required by the Court’s Order, and therefore any arguments with respect to their newly proposed definition should not be permitted.

example, by merely placing them immediately adjacent to each other: a pen can be brought together with a piece of paper, but they are not combined. Accordingly, Defendants’ proposal is inconsistent with the ordinary meaning and specification evidence, and therefore must be rejected.

E. “demand search”

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
one-time search performed upon a user request	search engine query

I/P Engine’s proposal for this term is consistent with the specification’s description and definition of a “demand search.” The specification describes two different types of searches: “wire” searches and “demand” searches. A “wire” search is a stored search that continuously updates its results over time based on a persistent or continuing information need. *See, e.g.*, Ex. 1 at col. 1, ll. 56-60. The ongoing nature of the “wire” is specifically contrasted in the intrinsic evidence with the one-time “demand search” that is performed when the user makes a one-time search request: “The search engine system employs a regular search engine to make ***one-shot or demand searches*** for information entities which provide at least threshold matches to user queries.” Ex. 1 at Abstract (emphasis added).

I/P Engine’s construction incorporates the teaching from the specification that a “demand search” is a “one-time” or “one-shot” search (as defined in the specification) that is performed “upon a user request” *i.e.*, on “demand.” This is entirely consistent with the specification. When a user makes a demand search request, that search is a “one-shot” search performed upon a user’s request. Ex. 1 at col. 23, ll. 56-60.

Defendants’ definition is inaccurate because it disregards the intrinsic evidence’s teachings that a demand search is a one-shot search upon a request from a user. Defendants’

proposal omits any reference to “one-shot” or to a user making the search demand, and instead proposes the vague concept of a “search engine query.”

F. “collaborative feedback data”

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
information concerning what informs other users with similar interests or needs found to be relevant	data from users with similar interest or needs regarding what informs such users found to be relevant

Although all parties refer to the same specification language to support their proposed definitions of “collaborative feedback data,” I/P Engine’s proposed construction more closely follows the language of the specification, and does not scramble and rearrange the intrinsic evidence or import additional limitations, as does Defendants’ proposed construction. The specification states: “Collaborative filtering . . . is the process of filtering informons, e.g., documents, by determining what informs other users with similar interests or needs found to be relevant.” Ex. 1 at col. 4, ll. 26-29. As the specification indicates, the system considers “what informs other users with similar interest or needs found to be relevant.” The parties agree that this is the claimed “collaborative feedback data” but only I/P Engine’s proposal faithfully adheres to the specification’s description.

Defendants’ proposal improperly imports additional limitations. For example, Defendants’ definition requires that the data be “*from* users with similar interest or needs.” The specification, however, does not require that the data originate “from” any particular source. By illustration, the chart below demonstrates Defendants’ overreaching by comparing the specification with the parties’ proposed constructions.

Specification	Plaintiff's Proposal	Defendants' Proposal
"determining [A] what informs other users with similar interests or needs found to be relevant."	"information concerning [A] what informs other users with similar interests or needs found to be relevant"	"data [B] from users with similar interests or needs regarding [A] what informs such users found to be relevant"

Defendants' proposed construction improperly imports an additional requirement ([B]) that is not supported by the claim language or the specification. I/P Engine's proposal, on the other hand, is identical to the specification's definition.

G. "[feedback system for] receiving information found to be relevant to the query by other users"

I/P Engine's Proposed Construction	Defendants' Proposed Construction
No construction necessary - or - [feedback system for] receiving information concerning what other users found to be relevant to the query	[system using a process of filtering information by] determining what information other users with similar interests or needs found to be relevant

This claim phrase requires no construction by this Court. The major component parts of this phrase comport with the widely accepted meaning of commonly understood words, are not in dispute, or will be resolved through other terms proposed for construction. The entire phrase itself will be understandable to a jury when the construction of the individual terms (such as "query") are provided by this Court.

If this Court deems a construction is necessary, I/P Engine proposes the phrase be construed as "[feedback system for] receiving information concerning what other users found to be relevant to the query." This phrase is taken directly from the intrinsic evidence. The specification describes how feedback data is provided and received by the system. The specification describes "receiving" feedback data as a separate step from a "process of filtering." FIG. 9 illustrates the receipt of "feedback data" from users by the "feedback processor 50C." After being "received" by the feedback processor, the system then passes the information to

other structures that perform the filtering. In FIG. 9, the feedback data is passed to search return processor 48C.

Defendants’ construction is improper for three reasons. First, it takes the phrase “receiving information” and—without any justification—turns it into “*using a process of filtering* information by determining” what information other users found to be relevant. There is no reason to add the “using a process of *filtering*” limitation to this phrase, when the phrase requires only the simple step of “*receiving*” data. Second, Defendants’ construction imports a limitation into the claim by requiring “users with similar interest or needs” where the limitation itself only recites “other users.” In this claim (as contrasted with some other claims), the language does not require the users to have similar interests or needs. Finally, Defendants’ construction fails to account for the part of the claim phrase that requires the information to be “relevant to the query.”

H. Order of Method Limitations

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
No “construction” is necessary; if there is any order, it is reflected in the claim language; otherwise, no order is required.	For ‘420 Claim 25, Step [a] must be performed before Step [b]; Steps [b] and [c] must be performed before Step [d]. For ‘664 Claim 26, Step [c]; Step [c1] (“combining”) must be performed before Step [c2] (“filtering the combined information”)

Generally, “[u]nless the steps of a method actually recite an order, the steps are not ordinarily construed to require one.” *Interactive*, 256 F.3d at 1342. Courts use a two-part test to determine if, in the absence of an explicit sequential order, method steps must nevertheless be performed in order. First, a court looks “to the claim language to determine if, as a matter of logic or grammar, [the steps] must be performed in the order written.” *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369 (Fed. Cir. 2003). If the logic or grammar of the claim language does not compel an order, courts “next look to the rest of the specification to determine whether it

directly or implicitly requires such a narrow construction.” *Id.* at 1310 (internal quotation marks omitted). If the invention could potentially be performed without going in the specific sequence, then the claim does not require an order of steps. *See id.* at 1371.

The best guide in this case is the claim language itself. Claim 25 of the ‘420 patent recites a method comprising:

“scanning a network to make a demand search for informons relevant to a query from an individual user;
receiving the informons in a content in a content-based filter system from the scanning system and filtering the informons on the basis of applicable content profile data for relevance to the query;
receiving collaborative feedback data from system users relative to informons considered by such users; and
combining pertaining feedback data with the content profile data in filtering each informon for relevance to the query.”

Claim 26 of the ‘664 patent recites:

“searching for information relevant to a query associated with a first user in a plurality of users;
receiving information found to be relevant to the query by other users;
combining the information found to be relevant to the query by other users with the searched information; and
content-based filtering the combined information for relevant to at least one of the query and the first user.”

For both claims, no order is explicitly recited. Unless the patent explicitly imposes an order, normally an order is not required. *See Interactive*, 256 F.3d at 1342. To the extent that some limitations presuppose that one of the earlier limitations has been performed, that (limited) required ordering of limitations is clear from the claim language itself and no construction is necessary. That type of ordering is not the construction of ambiguous claim terms. Instead, it is an improper attempt to argue non-infringement during the Markman stage, rather than waiting for trial.

Defendants have presented no evidence to support their contention that limitations of the claims must be performed in the recited order, as required by the Scheduling Order. Defendants’

original contention was a blanket statement that “[t]he steps of claim [25 and 26] must be performed in the recited order,” but presumably realizing that position was completely erroneous, they changed it. They now suggest that only certain limitations in the claims of these two patents must be performed before certain other limitations. These are each separate issues that are more precisely considered and analyzed by experts in the context of infringement. No construction is necessary.¹²

I. Different Systems

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
The claim language does not require the scanning system, content-based filter system, and feedback system of claim 1 of the ‘664 patent or the claimed system for scanning, content-based filter system, and feedback system of claim 10 of the ‘420 patent to be the same or different “systems.”	The claimed “system for scanning a network,” “content-based filter system,” and “feedback system” of ‘420 Claim 10 must be different systems and the claimed “scanning system,” “feedback system,” and “content-based filter system” of ‘664 Claim 1 must be different systems

Where the language of a claim does not clearly define an element as separate from another, courts look to the specification. *See, e.g., Retractable Tech. Inc. v. Becton, Dickinson and Co.*, 653 F.3d 1296, 1305 (Fed. Cir. 2011). For example, the specification describes that “[g]enerally, basic search engine system structures of the invention are preferably embodied with the use of a programmed computer system.” Ex. 1 at col. 24, ll. 34-36. The specification explains a point that is obvious to one of skill in the art: the various “processors” illustrated in the figures could actually be “one or more processors” and could be “combined functionally.” It explains:

An artisan would recognize that one or more of the processors 52-55 could be combined functionally so that the actual number of processors used in the apparatus 50 could be less than, or greater than, that illustrated in FIG. 2. For example, in one embodiment of the present invention, first processor 52 can be in a single microcomputer workstation,

¹² Analyzing each of Defendants’ proposed orderings separately, as is necessary and appropriate, places Defendants well over the ten term limit ordered by this Court.

with processors 53-55 being implemented in additional respective microcomputer systems. Suitable microcomputer systems can include those based upon the Intel® Pentium-Pro™ microprocessor. In fact, the flexibility of design presented by the invention allows for extensive scalability of apparatus 50, in which the number of users, and the communities supported may be easily expanded by adding suitable processors. As described in the context of FIG. 1, the interrelation of the several adaptive profiles and respective filters allow trends attributable to individual member clients, individual users, and individual communities in one domain of system 51 to be recognized by, and influence, similar entities in other domains, of system 51 to the extent that the respective entities in the different domains share common attributes.

Ex. 1 at col. 10, ll. 3-23 (emphasis added).

The specification thus confirms that separate “systems” are not required. Rather, the systems described in the specification are functional components of a computer system that could encompass the same or different physical components.

J. Antecedent Basis

I/P Engine’s Proposed Construction	Defendants’ Proposed Construction
<p>Where it is required under the law to apply the same claim meaning to a claim term based on antecedent basis, I/P Engine agrees that the law requires the parties to do so.</p> <p>Thus,</p> <p>“informons” provides antecedent basis for “the informons”;</p> <p>“users” provides antecedent basis for “such users”;</p> <p>“a query” provides antecedent basis for “the query”;</p> <p>“a feedback system” provides antecedent basis for “the feedback system”;</p> <p>“a scanning system” provides antecedent basis for “the scanning system”;</p> <p>“a first user” provides antecedent basis for “the first user” and</p> <p>“a content-based filter system” provides antecedent basis for “the content-based filter system.”</p>	<p>For the seven term dyads for which antecedent basis law applies, the second term in each dyad must be the same as the first term in the dyad</p>

Certain terms and phrases contained in the ‘420 and ‘664 patents are first introduced with an indefinite article, “a” or “an,” or with no article. These same terms and phrases are then

sometimes referred to later in the claim with the definite article “the.” For example, limitation 1(a) of the ‘420 patent recites: “a system for scanning a network to make a demand search for *informons* relevant to a query from an individual user” (emphasis added). Limitation 1(b) of the ‘420 patent recites: “a content-based filter system for receiving *the informons* from the scanning system” (emphasis added). None of these terms require construction for purposes of determining an antecedent basis.¹³

Defendants, however, propose constructions that, as they have acknowledged to I/P Engine, go beyond confirming that the ordinary result of antecedent basis applies, and instead insisted that their “the same as” language would impose “certain consequences” that they hope to argue for non-infringement purposes. Ex. 10. Defendants’ proposal is improper. Antecedent basis is a claim drafting technical procedure, and this Court should not inject further language and potential confusion into the claims when, as here, the ordinary meaning makes clear that terms refer to each other.

This is not the first time that Google has proposed constructions seeking to import additional limitations to terms connected by nothing more than antecedent basis. For example, in *Personalized User Model LLP v. Google Inc.*, 2012 WL 295048 at *26 (D. Del. January 25, 2012), Google requested a similar “refers to the same” construction of terms linked merely by antecedent basis. *See*, Defendant Google’s Opening Brief on Claim Construction, D.I., 116, at

¹³ To the extent the Court wants to construe each of the seven claim terms at issue, the Court should construe them as follows: “informons” provides antecedent basis for “the informons”; “users” provides antecedent basis for “such users”; “a query” provides antecedent basis for “the query”; “a feedback system” provides antecedent basis for “the feedback system”; “a scanning system” provides antecedent basis for “the scanning system”; “a first user” provides antecedent basis for “the first user” and “a content-based filter system” provides antecedent basis for “the content-based filter system.” These statements along with a standard instruction on antecedent basis provides the jury sufficient clarity to understand these claims without importing additional unnecessary limitations.

24-25, *Personalized User Model LLP v. Google Inc.*, Case No. 09-cv-525, 2012 WL 295048 (D. Del. January 25, 2012). There, the court noted that “both parties appear to agree . . . that the antecedent basis for [a second term] is [a first term]” (*Personalized User Model*, 2012 WL 295048 at *26), and the court declined to go any further, stating “[b]ecause the parties effectively agree on all of this and it is clear from the claim language, the Court finds it unnecessary to provide any further construction.” *Id.* at 27. This Court should do the same, and not analyze each of Defendants’ “are the same as” constructions.

VI. CONCLUSION

For the foregoing reasons, I/P Engine respectfully requests that this Court adopt its claim constructions.

Dated: April 12, 2012

By: /s/ Jeffrey K. Sherwood
Donald C. Schultz (Virginia Bar No. 30531)
W. Ryan Snow (Virginia Bar No. 47423)
CRENSHAW, WARE & MARTIN PLC
150 West Main Street
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735

Jeffrey K. Sherwood (Virginia Bar No. 19222)
Frank C. Cimino, Jr.
Kenneth W. Brothers
Leslie Jacobs
Charles J. Monterio, Jr.
Jonathan L. Falkler
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

Counsel for Plaintiff I/P Engine, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2012, the foregoing **I/P ENGINE'S OPENING CLAIM CONSTRUCTION BRIEF**, was served via the Court's CM/ECF system, on the following:

Stephen Edward Noona
Kaufman & Canoles, P.C.
150 W Main St
Suite 2100
Norfolk, VA 23510
senoona@kaufcan.com

David Bilsker
David Perlson
Quinn Emanuel Urquhart & Sullivan LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
davidbilsker@quinnemanuel.com
davidperlson@quinnemanuel.com

Robert L. Burns
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190
robert.burns@finnegan.com

Cortney S. Alexander
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
3500 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, GA 94111
cortney.alexander@finnegan.com

/s/ Jeffrey K. Sherwood