Exhibit 2 (Amended)

Parties' Amended Joint Claim Chart for U.S. Patent No. 6,757,682

I. AGREED-UPON TERMS

Claim Language	Plaintiff's and Defendants' Agreed-Upon Construction
intensity rank Found in claims[1]: 5, 6	**intensity rank** Agreed-upon construction: A value associated with an item that represents the level of current interest in that particular item relative to other items
from a source other than Found in claims: 1, 2, and 3	**from a source other than** Agreed-upon construction: From a user other than
[receive / receiving] in real time Found in claims: 1, 2, and 3	**[receive / receiving] in real time** Agreed-upon construction: [receive/receiving] immediately or almost immediately after the indication.

II. TERMS IN DISPUTE

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]

[1] Throughout this claim chart, reference to an independent claim includes by reference any claims depending from that independent claim.

[2] In addition to the intrinsic and extrinsic evidence cited herein, Interval identifies (1) all claims in which any term appears as support for its constructions and (2) all intrinsic and extrinsic evidence for each claim term cited by Defendants.

[3] Defendants provide herein preliminary claim constructions and identification of purported "structure" disclosed in the specification of the '682 patent for certain claim terms. By providing these constructions for any claim term or identifying a purported structure for any means-plus-function term, Defendants do not concede that any such claim or claim term satisfies the definiteness requirements of 35 U.S.C. § 112 and expressly reserve the right to challenge any claim on that basis.

[4] Defendants identify herein evidence that may support its proposed constructions. By identifying portions of the specification in this document, defendants do not concede that any claim satisfies the enablement or written description requirements of 35 U.S.C. § 112 and expressly reserve the right to challenge any claim on those bases. By identifying portions of the provisional application to which the '682 patent purports to claim priority, defendants do not concede that said provisional application provides written description or other support for any claim. In addition to the intrinsic and extrinsic evidence cited herein, defendants identify (1) all claims in which any term appears as support for its constructions and (2) all intrinsic and extrinsic evidence for each claim term cited by Plaintiff.

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
Term 1 "**an indication that [an/the] item … is of current interest**" Found in claims: 1, 2, and 3	**an indication that [an/the] item … is of current interest** <u>Proposed Construction:</u> an indication that [an/the] item … is of interest at that time <u>Intrinsic Evidence:</u> Figs. 1, 2B, 5, 7, 11 "The level of current interest of a particular file or other electronic resources is determined based on indications received from alerting users." 2:31-33. "However, this proliferation of content, such as audio, image, and video content, presents certain challenges from the perspective of users seeking content of current interest. First, the shear volume of content available makes it difficult for users to find the content in which they are most interested in accessing at any given time. Apart from having to sort through the enormous volume of content available, much of the content of potentially greatest interest, at least to many users, is dynamic. At certain times, a file or other electronic resource may be of great interest while at other times, or perhaps even most of the time, it is not of great interest or not interesting at all." 1:41-52. "There is also a need to ensure that interested users receive alerts with respect to web content or other electronic resources that are of interest only to a relatively small community of users, or that are of interest on only relatively rare or infrequent occasions. There is a risk, otherwise, that indications of current interest regarding such files and other electronic resources would be masked by more voluminous or frequent activity with respect to more widely popular or pervasive resources or types of resources (such as pornography sites on the World Wide Web)." 2:18-27.	**an indication that [an/the] item … is of current interest** <u>Proposed Construction:</u> An alert that activity of interest is happening now in a dynamically changing electronic resource. <u>Intrinsic Evidence:</u> '682 Patent Title, 1:1-2 ("ALERTING USERS TO ITEMS OF CURRENT INTEREST") '682 Patent 1:22-27 ("FIELD OF THE INVENTION: The present invention relates generally to communications and computer networks. More specifically, alerting users to dynamic content accessible via a communications or computer network that is of interest at the time of the alert is disclosed.") '682 Patent 1:43-53 ("First, the shear volume of content available makes it difficult for users to find the content in which they are most interested in accessing at any given time . . . much of the content of potentially greatest interest, at least to many users, is dynamic. At certain times, a file or other electronic resource may be of great interest while at other times, or perhaps even most of the time, it is not of great interest or not interesting at all.") '682 Patent 1:58-2:6 ("A webcam might be used, for example, to provide images of a watering hole in Africa. Typically, users would access a website associated with the webcam to view activity at the watering hole. However, there would be many periods during which nothing of particular interest (e.g., no animals, etc.) would be happening at the watering hole. Conversely, there would be occasional periods when activity of great interest would be occurring, such as the presence of a rare or endangered animal at the watering hole. Users would have no way of knowing when such activity would be occurring, and might miss the most interesting images if they did not happen to check the website at the right time. The same problems arise with respect to files or other electronic resources other than webcam content provided via the World Wide Web, including other media such as audio.")

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	"Accordingly, alerting users of items of current interest is disclosed. The level of current interest of a particular file or other electronic resource is determined based on indications received from alerting users. One or more users receive an alert that the item is of current interest." 2:30-34. "Disseminating to a participant an indication that an item accessible by the participant via a network is of current interest is disclosed . . ." 2:47-65. "As indicated in FIG. 1, an alert sent by an alerting user includes, in one embodiment, at least the URL of the web content considered by the alerting user to be of current interest. . . . the alerting user may provide text indicating what the alerting user believes to be of current interest in the web content." 5:4-12. '682 File History, April 9, 2003 Office Action, at 3 (noting that documents viewed in Eichstaedt were of current interest) Exhibit B-1 IL_DEFTS0008325 at 8327; *see also* September 16, 2003 Office Action, at 3 (same) Exhibit B-1 IL_DEFTS0008598 at 8600. Provisional Application to the '682 Patent (No. 60/178627), at 3 ("In one embodiment, a 'Hot Now' virtual pushbutton is present on a user's web display. When the user sees something they feel is of interest, they press the button. Pressing the Hot Now button sends an alert message to everyone using the infrastructure who has indicated that such alerts are of interest to them (based upon factors described below). Along with the alert message a link to the website of interest is provided, and alerted users can chose [sic] to go there. If they also believe the site is currently interesting, they can press their Hot Now button and further propagate the alert."); *see also* 9 ("For example, the system may be used to provide and alert when someone finds anything on the Web that is timely and worthy of alerting others who have expressed interest, such as auctions."). <u>Extrinsic evidence:</u> Webster's New World College Dictionary, 4th ed. at 355 (defining "current" as "at the	'682 Patent 2:7-14 ("As a result there is a need for a way to alert users to web content or other electronic resources available via a communications or computer network that are of interest at a particular time. To meet this latter need, there is a need to provide a way to become aware that dynamic web content or an electronic resource other than web content is of interest at a given time, and to quantify the degree or level of current interest.") '682 Patent 2:30-34 ("Accordingly, alerting users of items of current interest is disclosed. The level of current interest of a particular file or other electronic resource is determined based on indications received from alerting users. One or more users receive an alert that the item is of current interest.") '682 Patent 2:47-65 (". . . Disseminating to a participant an indication that an item accessible by the participant via a network is of current interest is disclosed . . . .") '682 Patent 3:9-12 ("to alert users to dynamic content of interest at the time of the alert (also referred to herein as an 'item of current interest')"). '682 Patent 4:11-14 ("alert users to dynamic content of interest at the time of the alert (also referred to herein as an 'item of current interest').") '682 Patent 4:11-19 (". . . The system 100 includes at least one alerting user 102 who accesses dynamic content associated with a uniform resource locator (URL), determines the content is of current interest, and sends an alert indicating that the URL is of current interest, as described more fully below."). '682 Patent 4:20-24 ("In one embodiment, participant 104 provides an indication of the participant's interests and receives a list of URLs providing the location of dynamic content, such as web content on the World Wide Web, that may be of interest to the participant at the time of the alert.") '682 Patent 5:4-12 ("As indicated in FIG. 1, an

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	present time; contemporary") The American Heritage Dictionary of the English Language, 4th ed. (2000) at 446 (defining "current" as "belonging to the present time" or "prevalent, especially at the present time") Webster's Ninth New Collegiate Dictionary (1985) at 316 (defining "current" as "occurring in or existing at the present time"). Declaration of William Mangione-Smith, ¶¶ 5, 7 (opining that claims should not be limited to a preferred embodiment)	alert sent by an alerting user includes, in one embodiment, at least the URL of the web content considered by the alerting user to be of current interest. . . .") '682 Patent 5:13-19 ("FIG. 2A is a series of three screen shots showing three different states of an alert submission display . . .") '682 Patent Figures 2A, 3, 11 '682 Patent 5:58-60 ("The process begins in step 302 in which an alert indicating that an item is of current interest is received.") Provisional Application 60/178,627 ("Provisional App.") (referenced by the '682 patent as a related U.S. Application) Exhibit B-1 at IL_DEFTS0009124-35 Provisional App., Title: "Alerting Users to Web Sites of Current Interest . . . " Exhibit B-1 at IL_DEFTS0009125 Provisional App. at Summary ("While dozens of web cam portals and directories exist, none are capable of propagating an alert that 'something interesting is happening now,' to the right people. To solve this problem, a real time meta-data happening infrastructure allowing people who see interesting occurrences to alert other interested parties is disclosed. The system is referred to as 'Hot Now.'") Exhibit B-1 at IL_DEFTS0009125 Provisional App. at Sec. 1.3 ("Today, dozens of such webcam directories exist, some including more than 10,000 entries. Such services are valuable in a limited way. They can help users find the African watering hole, but cannot help users determine when an animal is present.") Exhibit B-1 at IL_DEFTS0009126 Provisional App. at Sec. 1.4 ("Most webcam and web video directories have some method of ranking. These methods range from editorial choices made by the directory operators to voting on the part of the viewers. It's common to see "top ten" lists, often with voting numbers available, and to see such honors as "webcam of

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		the day." From our perspective, such determinations are relatively static and cannot help anyone interested in short time based events. Sites which list a webcam of the minute do exist, but there is no special time-based relevance in a selected webcam.") Exhibit B-1 at IL_DEFTS0009127 Provisional App. at 2.1 ("Pressing the Hot Now button sends an alert message to everyone using the infrastructure who has indicated that such alerts are of interest to them (based upon factors described below). Along with the alert message a link to the website of interest is provided, and alerted users can chose to go there. If they also believe the site is currently interesting, they can press their Hot Now button and further propagate the alert.") Exhibit B-1 at IL_DEFTS0009127 Extrinsic evidence: **Interval.com web site, circa February 2002** (**"Kundi.com** is a spin-off venture from Paul Allen's Interval Research Corporation. It began in 1999 as a fast-track research project to explore interesting commercial opportunities relating to webcams, whose usage had begun to explode. We found that webcams and streaming media had a search problem unique for the Web: time. Search engines are not equipped to find events *as they happen*. Kundi developed an alert infrastructure, whereby people can alert other people in real time to encourage propagation. **Interval spin-off Kundi's web site, before Feb. 19 2001** ("Kundi.com is a unique time-critical network mining tool. Its purpose is to find interesting events on the Web *as they happen*. We first became aware of the need while researching web cameras and other forms of spontaneous streaming media. Existing search engines can easily find an animal cam in Africa**,** but none can tell you when an animal is present. Our solution relies on humans alerting other humans. We've created a unique alert infrastructure that allows people to press our

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		"HotNow Button" when they see something that interests them. They can also add a brief comment if they desire. This information enters our "HotNowList" displayed as a pop-up window, which updates every 10 (that's TEN) seconds. . . . This information enables interesting live events to propagate up, or down, the list: 'people's choice' in real time. **Interval spin-off Kundi.com home page, circa April 2002** ("HotNow is a unique tool that lets you find and share the most interesting events on the Web – ***right when they're happening.*** . . . Updated every ten seconds, the HotNow List reveals the 50 web sites that HotNow users (like you!) find most interesting *right now*.") (emphasis in original). **'682 patent co-applicant Michael Naimark's Web-site naimark.net** ("In 1999, anticipating the explosion of live streaming video and other media, an effort launched at Interval Research Corporation proposed a solution to finding live, unscheduled events as they happen. This solution enabled people to alert other people in real time to encourage propagation, and resulted in an Interval spinoff venture called Kundi.com. Kundi was up and running until 2001. Three patents were allowed in 2003 and 2004.") **'682 patent co-applicant Michael Naimark, email to colleagues dated 03/21/2001** Kundi.com, the post-Interval webcam venture you've heard me mention, has launched a beta version. It addresses a unique problem shared by webcams and other live media: finding interesting events *as they happen*. Our solution is based on people alerting other people. We've developed a 'HotNow Button,' that people press when they see something interesting, and a 'HotNow List,' that links to the top ranked HotNow sites. Pressing the HotNow Button counts as a big vote, linking to a site from the HotNow List counts as a small vote, and time decays all values. The rest is math. Our system updates every ten seconds, so things quickly propagate up or fall off.

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		Terveen expert report[5], ¶¶ 23: 23. The system disclosed in the '682 application deals with 'dynamic' electronic content available for transmission over the network that may be of great interest at one moment, but of no interest shortly thereafter. . . The type of dynamic content that is the object of the invention (e.g., '682 patent at 1:53-2:47 ("the presence of a rare or endangered animal at the watering hole" which is being monitored by a webcam)) will be of interest only for short periods of time. . . . Interval Research "Project Narrative," on or about 08/06/1999 [INT00004442-43, Marked "Confidential"] *The American Heritage Dictionary of the English Language*. 4th ed. 2000. • Current: "**1b.** Being in progress now: *current negotiations*." • Indication: "**1.** The act of indicating. **2.** Something that serves to indicate; a sign • Indicate: "**1.** To show the way to or the direction of; point out:" *Oxford English* Dictionary, second edition (1989) • Current: "3. a. Running in time; in course of passing; in progress." • Indication: "1. a. The action of indicating, pointing out, or making known; that in which this is embodied; a hint, suggestion, or piece of information from which more may be inferred." • Indicate: "1. To point out, point to, make known, show (more or less distinctly)." *Oxford World Dictionary* • Current: "belonging to the present time; happening or being used or done

[5] Expert Report and Declaration of Professor Loren Terveen Regarding U.S. Patent No. 6,757,682, signed and dated April 4, 2011.

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		now: *keep abreast of current events*; *I started my current job in 2001*" Webster's New World College Dictionary, 4th ed. • Current: "2 a) now going on; now in progress [the current month, his current job] b) at the present time; contemporary [current fashions] c) of most recent date [the current edition]"
Term 2 **[determine / determining] . . . an intensity weight value** Found in claims: 1, 2, and 3	**[determine/determining] . . . an intensity weight value** <u>Proposed Construction:</u> "intensity weight value" = A value associated with an item to which an indication pertains that represents the level of interest in that item <u>Intrinsic Evidence:</u> "intensity weight value" "The alert object also includes an LAST_RANK field 518 used to store a numerical ranking retrieved from the database that indicates the overall level or degree of current interest of an item as indicated by all of the alerts that have been submitted with respect to a URL during the current period of activity with respect to the URL through the most recent prior alert. The alert object also includes a LAST_WEIGHT field 520 used to store data retrieved from a database table, as described below, that represents the number of prior alerts received for the URL in the interest category indicated by the current alert, as described more fully below. The alert object also includes a LAST_INTENSITY_SUM field 522 in which the sum of the intensities of all prior alerts for the URL during the current period of activity with respect to the URL, which sum is retrieved from a database table described more fully below, is stored." 6:31-47. "Next, in step 606, the intensity sum for the URL, which is the sum of the intensity values	**[determine/determining] . . . an intensity weight value** <u>Proposed Construction:</u> This claim language is insolubly ambiguous and not amenable to any reasonable construction <u>Intrinsic Evidence</u>: Application that lead to the '682 patent, including original claims of that application. Exhibit B-1 at IL_DEFTS0008266-69. Original claims of purportedly incorporated U.S. Pat. Appl. No. 09/656,518 ("'518 application") Original claims of purportedly incorporated U.S. Pat. Appl. No. 09/658,346 ("'346 application") <u>'682 Patent Prosecution History</u> April 9, 2003 Office Action at 3 ("As to claim 2, <u>Eichstaedt et al.</u> teaches a method, wherein processing the indication comprises determining an intensity value (i.e. numerical value) for the indication based on at least one attribute of the indication (see column 3, lines 29-38), the intensity value (i.e. numerical value) representing the weight that will be given to the indication (see column 3, lines 49-54).") Exhibit B-1 at IL_DEFTS0008328. September 16, 2003 Office Action (same) Exhibit B-1 at IL_DEFTS0008601.

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	for all of the alerts with respect to the URL, is updated." 7:28-30. "In step 610, the interest weight value, which represents the number of alerts for a particular URL in which a particular category of interest was indicated, is updated." 7:32-34. "As noted above, in one embodiment, the weight is the total number of alerts received within a given interest category for a URL." 7:49-51. "Finally, the database table 700 includes a NORMALIZE table 712 used to store the sum of the intensities of the alerts submitted for a URL (INTENSITY_SUM) and a time stamp indicating when the last normalization was performed." 7:67-8:3. "FIG. 8A is a flowchart illustrating a process used in one embodiment to update the intensity sum for a URL, as in step 606 of FIG. 6. The process begins with step 802 in which the current intensity sum is retrieved from the database, as in step 604 of FIG. 6. If there is no existing record for the URL in the NORMALIZE table (i.e., the alert being processed is the first alert for the URL), a URL_ID is assigned for the URL, a record for the URL is created in the NORMALIZE table, and the retrieved current intensity sum is set to zero. Next, in step 804, the intensity sum is incremented by the amount of the intensity of the current alert. For example, if the previous intensity sum was 4.7 and the intensity for the current alert was 0.5, the intensity sum would be incremented to the value of 4.7+0.5=5.2. Finally, in step 806, the intensity sum time stamp stored in NORMALIZE table 712 shown in FIG. 7 (which is the same as the LAST_NORMAL_TIME stored in field 524 of FIG. 5) is updated to the time stamp of the current alert. In one embodiment, the intensity sum is updated, and a normalization is performed as described more fully below, each time a new alert is received for a URL. In such an embodiment, the time stamp stored in the NORMALIZE table 712 of FIG. 7 will be the same as the time stamp stored in the RANK table 708 of FIG. 7, as both the rank and the intensity sum are updated each time an	Nov. 28, 2003 Amendment and Remarks (adding new language, "determining an intensity value to be associated with the indication and an intensity weight value, and adjusting the intensity value based on a characteristic for the item provided by the source" and arguing that: "The rejection is respectfully traversed. As amended, claim 1 recites "...determining an intensity value to be associated with the indication and an intensity weight value, and adjusting the intensity value based on a characteristic for the item provided by the source...." Eichstaedt et al. discloses ranking categories and generating profiles, but based on feedback from the user following interaction with an item. (Col. 3, lines 28-67). The weight of a category is based on the number of user clicks on a document or actions expressed by the user. (Col..3, lines 52-54). Eichstaedt et al. does not disclose an intensity value adjusted based on a characteristic for an item provided by a source, as in the claimed invention. Thus, claim 1 is allowable for the reasons stated above.") Exhibit B-1 at IL_DEFTS0008614 & IL_DEFTS0008620. Extrinsic evidence: **Terveen Report, ¶ 30, 33**. 30. In a November 24, 2003 amendment, the applicants added the following clause to all independent claims: [determining/determine] an intensity value to be associated with the indication and an intensity weight value, and adjusting the intensity value based on a characteristic for the item provided by the source E.g., issued '682 patent at claim 1. 33. A PHOSITA in 2000 could not determine a meaning for the term "intensity weight value," even with the aid of the application and prosecution history. In this regard, I note the following: a. A PHOSITA in 2000 would not have understood this term to have an accepted meaning in the art.

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	alert is received." 8:4-28. With respect to the "interest weight value": "The process then proceeds to step 850 in which the weight value is incremented for the URL with respect to the interests category by increasing the value from zero to one for the new record." 10:12-15; see also 10:19-23. "As to claim 3, Eichstaedt et al. teaches a method, wherein processing the indication further comprises calculating an intensity rank for the item based at least in part on the intensity value (i.e., numerical value) of the indication (see column 3, lines 28-64), the intensity rank indicating the level of current interest of the item relative to other items (see column 3, lines 49-53; where 'intensity rank' is ready on 'weight.')." '682 Prosecution History, Office Action, April 9, 2003, at 3, Exhibit B-1 IL_DEFTS0008325 at 8334. Extrinsic Evidence Declaration of William Mangione-Smith: "Furthermore, I do find support for the meaning of 'intensity weight value' in the filed application. The specification itself aligns precisely with the language of claim 1. Claim 1 requires determining (1) an intensity value and (2) an intensity weight value. As described in the '682 specification at Figure 6 and 6:51-7:35, an intensity value is calculated at step 602 ('the intensity of the alert is determined'). At step 604, data values are retrieved from the database. At step 606, the intensity sum is updated for the URL, 'which is the sum of the intensity values for all of the alerts with respect to the URL.' Intensity sum is an intensity ***weight*** value for the URL in the same manner as the 'interest ***weight*** value' is for a particular category of interest for a particular URL. „682 patent at 7:32-34 ('[I]nterest ***weight*** value . . . represents the number of alerts for a particular URL in which a particular category of interest was indicated . . . .'); *see also* 7:50-51 ('As noted above, in one embodiment, the weight is the total number of alerts received within a given interest category for a URL.'). At step 608, the intensity rank for the URL is updated.	b. Grammatically, the claim language fails to inform how the term "intensity weight value" relates to other terms in the claim—a PHOSITA would not know whether the claim required "determining [1] an intensity value to be associated with the indication and [2] an intensity weight value;" or "determining an intensity value to be associated with [1] the indication and [2] an intensity weight value." c. The amended claims do not specify how the "intensity weight value" is used, if at all, and are, therefore, silent concerning the role this concept should play in the rest of the claimed method, system or product. d. The term "intensity weight value" is not used anywhere in the application or its purportedly incorporated applications and, thus, there is no guidance that would allow one of skill in the art to determine its meaning. e. In amending the claims to add this previously-unused language, the applicants provided no explanation for how it related to the alleged invention described in the original '682 application. f. The constituent words of this term are used loosely in the '682 application, including sometimes interchangeably. As just one example, the '682 application states that "[t]he term intensity as used herein refers to the weight or value to be assigned to a particular alert regarding an item." ('682 patent at 6:54-56). g. The '682 application describes two values that are updated after the "intensity value" for a particular alert has been determined: an "intensity sum" and an "interest weight value." These two values are described as being separately updated and each value carries different information. (See '682 patent at 7:28-30 ("Next, in step 606, the intensity sum for the URL, which is the sum of the intensity values for all of the alerts

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	See '682 patent at 8:29-10:57 (describing the various ways in which the intensity rank can be calculated). The intensity rank is a weighted sum of intensity values and thus is also an intensity weight value. Finally, at step 610, the interest weight value is updated, 'which represents the number of alerts for a particular URL in which a particular category of interest was indicated.' '682 patent at 7:32-34. The interest weight value is not an 'intensity weight value' because it is not based on intensity values. Instead, it is based purely on a summation of a specific class of alerts and is unaffected by the intensity value of any alert. I believe that one of ordinary skill in the art on or about the time of the filing of the application that issued as the '682 patent would understand that both the intensity sum and the intensity rank are 'intensity weight values' as that term is used in claim 1 of the '682 patent." ¶ 19; *see also* ¶ 20 (discussing use of "weight" in the procession history) and ¶ 21.	with respect to the URL, is updated.") (emphasis added); 7:32-35 ("In step 610, the interest weight value, which represents the number of alerts for a particular URL in which a particular category of interest was indicated, is updated.") (emphasis added)). A PHOSITA could not determine whether the "intensity weight value" in the claims corresponds to the "intensity sum" or the "interest weight value" described in the specification – or even if it relates to either of these values. One of ordinary skill in the art would be left guessing as to which of the various values described in the specification, if any, corresponds to the "intensity weight value" recited in the amended claims.
Term 3 **[determine / determining] an intensity value to be associated with the indication** Found in claims: 1, 2, and 3	**[determine/determining] an intensity value to be associated with the indication** Proposed Construction: [determine/determining] a value to be associated with the indication that represents the strength of the indication Intrinsic Evidence: "ALERT INTENSITY field 514 is used to store a number indicating the intensity or weight to be afforded to the incoming alert. The ALERT INTENSITY is determined as described below." 6:23-26. "The term intensity as used herein refers to the weight or value to be assigned to a particular alert regarding an item. In one embodiment, the value assigned for the intensity is higher if the alerting user selects an interest category for the alert than it would have been if the same alerting party had not selected an interest category. In one embodiment, the intensity value is higher if the alerting party provides a	**[determine/determining] an intensity value to be associated with the indication** Proposed Construction: Calculate and assign to "the indication" a numerical value representing the reliability of the particular indication based on its source or content. Intrinsic Evidence: '682 Patent, Dependent claim 18 ("The method of claim 3, further comprising determining the weight to be given to the indication.") '682 Patent, 2:10-17 ("To meet this latter need there is a need to provide a way to become aware that dynamic web content or an electronic resource other than web content is of interest at a given time, and to quantify the degree or level of current interest.") '682 Patent, 6:23-26 ("ALERT INTENSITY field 514 is used to store a number indicating the intensity or weight to be afforded the incoming alert. The ALERT INTENSITY is determined as described below.")

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	caption for the alert than it would have been if the alerting party had not provided a caption. In one embodiment, the intensity of an alert is increased if it is determined that the alerting party is a party that has provided particularly relevant or helpful alerts in the past, or is trusted for some other reason, such as expertise, academic credentials, or reputation within a particular community of interest. In one embodiment, the intensity of an alert is decreased if it is determined that the alerting party has provided unhelpful or erroneous alerts in the past, or if it is determined that the alerting party cannot be trusted as much as other alerting parties for other reasons, such as reputation in the relevant community. In one embodiment, it is possible to provide both an active alert by selecting an alert button and to provide a passive alert by merely accessing a URL with respect to which an alerting party previously submitted an active alert. In one embodiment, an active alert is assigned a higher intensity value than a passive alert." 6:54-7:12. "For example, a passive alert may be arbitrarily assigned a baseline intensity value of 0.3 and an active alert a baseline intensity value of 0.5. For an active alert, 0.1 could be added for each of the following conditions that is satisfied by the alert: an interest category selection was included in the alert; a caption was included in the alert; and/or the source of the alert is particularly trusted. Conversely, 0.1 could be subtracted from the intensity of an alert from a source known to be unreliable. Alternatively, alerts from sources known to be unreliable may be blocked and not assigned any intensity value." 7:13-23. <u>No extrinsic evidence identified.</u>	'682 Patent, 6:51-7:24 ("FIG. 6 is a flowchart illustrating a process used in one embodiment to process as alerts as in step 304 of FIG. 3. The process begins with step 602 in which the intensity of the alert is determined. The term intensity as used herein refers to the weight or value to be assigned to a particular alert regarding an item. In one embodiment, the intensity is a value between 0 and 1. In one embodiment, the value assigned for the intensity is higher if the alerting user selects an interest category for the alert than it would have been if the same alerting party had not selected an interest category. In one embodiment, the intensity value is higher if the alerting party provides a caption for the alert than it would have been if the alerting party had not provided a caption. In one embodiment, the intensity of an alert is increased if it is determined that the alerting party is a party that has provided particularly relevant or helpful alerts in the past, or is trusted for some other reason, such as expertise, academic credentials, or reputation within a particular community of interest. In one embodiment, the intensity of an alert is decreased if it is determined that the alerting party has provided unhelpful or erroneous alerts in the past, or if it is determined that the alerting party cannot be trusted as much as other alerting parties for other reasons, such as reputation in the relevant community. In one embodiment, it is possible to provide both an active alert by selecting an alert button and to provide a passive alert by merely accessing a URL with respect to which an alerting party previously submitted an active alert. In one embodiment, an active alert is assigned a higher intensity value than a passive alert. For example, a passive alert may be arbitrarily assigned a baseline intensity value of 0.3 and an active alert a baseline intensity value of 0.5. For an active alert, 0.1 could be added for each of the following conditions that is satisfied by the alert: an interest category selection was included in the alert; a caption was included in the alert; and/or the source of the alert is particularly trusted. Conversely, 0.1 could be subtracted from the intensity of an alert from a source known to be unreliable. Alternatively, alerts from sources known to be unreliable may be

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		blocked and not assigned any intensity value. The process illustrated in FIG. 6 continues with step 604 . . . ") Original claims of purportedly incorporated '518 application Original claims of purportedly incorporated '346 application <u>'682 Patent Prosecution History</u> April 9, 2003 Office Action at 3 ("As to claim 2, <u>Eichstaedt et al.</u> teaches a method, wherein processing the indication comprises determining an intensity value (i.e. numerical value) for the indication based on at least one attribute of the indication (see column 3, lines 29-38), the intensity value (i.e. numerical value) representing the weight that will be given to the indication (see column 3, lines 49-54).") Exhibit B-1 at IL_DEFTS0008328. September 16, 2003 Office Action (same) Exhibit B-1 at IL_DEFTS0008601. Nov. 28, 2003 Amendment and Remarks at 8: ("The rejection is respectfully traversed. As amended, claim 1 recites "...determining an intensity value to be associated with the indication and an intensity weight value, and adjusting the intensity value based on a characteristic for the item provided by the source...." <u>Eichstaedt et al</u>. discloses ranking categories and generating profiles, but based on feedback from the user following interaction with an item. (Col. 3, lines 28-67). The weight of a category is based on the number of user clicks on a document or actions expressed by the user. (Col..3, lines 52-54). <u>Eichstaedt et al.</u> does not disclose an intensity value adjusted based on a characteristic for an item provided by a source, as in the claimed invention. Thus, claim 1 is allowable for the reasons stated above.") Exhibit B-1 at IL_DEFTS0008614 & IL_DEFTS0008620. <u>Extrinsic evidence:</u> *Webster's Ninth New Collegiate Dictionary © 1985*

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		• determine: o "1a. to fix conclusively or authoritatively." o "4a. to find out or come to a decision about by investigation, reasoning, or calculation <~ the answer to the problem> <~ a position at sea>" *The American Heritage Dictionary of the English Language*. 4th ed. 2000. • determine: o "1a. To decide or settle (a dispute, for example) conclusively and authoritatively." o "2. To establish or ascertain definitely, as after consideration, investigation, or calculation." o "7. *Mathematics* To fix or define the position, form, or configuration of." *Oxford English* Dictionary, second edition (1989) determine: "11. *trans.* To ascertain definitely by observation, examination, calculation, etc. (a point previously unknown or uncertain); to fix as known." Webster's New World College Dictionary, 4th ed. at 355 • determine: "to find out exactly; calculate precisely; ascertain [to determine a ship's position]"
Term 4 **adjusting the intensity value based on a characteristic for the item provided by the source** Found in claims: 1, 2, and 3	**adjusting the intensity value based on a characteristic for the item provided by the source** <u>Proposed Construction:</u> modifying the intensity value based on the source's activities pertaining to the item <u>Intrinsic Evidence:</u> "ALERT INTENSITY field 514 is used to	**adjusting the intensity value based on a characteristic for the item provided by the source** <u>Proposed Construction:</u> Modifying the determined intensity value based upon a distinguishing trait, quality or property of the "item" identified by the source. <u>Intrinsic Evidence</u>: '682 Patent, 6:51-7:24 ("FIG. 6 is a flowchart

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	store a number indicating the intensity or weight to be afforded to the incoming alert. The ALERT INTENSITY is determined as described below." 6:23-26. "In one embodiment, the value assigned for the intensity is higher if the alerting user selects an interest category for the alert than it would have been if the same alerting party had not selected an interest category. In one embodiment, the intensity value is higher if the alerting party provides a caption for the alert than it would have been if the alerting party had not provided a caption. In one embodiment, the intensity of an alert is increased if it is determined that the alerting party is a party that has provided particularly relevant or helpful alerts in the past, or is trusted for some other reason, such as expertise, academic credentials, or reputation within a particular community of interest. In one embodiment, the intensity of an alert is decreased if it is determined that the alerting party has provided unhelpful or erroneous alerts in the past, or if it is determined that the alerting party cannot be trusted as much as other alerting parties for other reasons, such as reputation in the relevant community. In one embodiment, it is possible to provide both an active alert by selecting an alert button and to provide a passive alert by merely accessing a URL with respect to which an alerting party previously submitted an active alert. In one embodiment, an active alert is assigned a higher intensity value than a passive alert." 6:57-7:12. "For example, a passive alert may be arbitrarily assigned a baseline intensity value of 0.3 and an active alert a baseline intensity value of 0.5. For an active alert, 0.1 could be added for each of the following conditions that is satisfied by the alert: an interest category selection was included in the alert; a caption was included in the alert; and/or the source of the alert is particularly trusted. Conversely, 0.1 could be subtracted from the intensity of an alert from a source known to be unreliable. Alternatively, alerts from sources known to be unreliable may be blocked and not assigned any intensity value." 7:13-23.	illustrating a process used in one embodiment to process as alerts as in step 304 of FIG. 3. The process begins with step 602 in which the intensity of the alert is determined. The term intensity as used herein refers to the weight or value to be assigned to a particular alert regarding an item. In one embodiment, the intensity is a value between 0 and 1. In one embodiment, the value assigned for the intensity is higher if the alerting user selects an interest category for the alert than it would have been if the same alerting party had not selected an interest category. In one embodiment, the intensity value is higher if the alerting party provides a caption for the alert than it would have been if the alerting party had not provided a caption. In one embodiment, the intensity of an alert is increased if it is determined that the alerting party is a party that has provided particularly relevant or helpful alerts in the past, or is trusted for some other reason, such as expertise, academic credentials, or reputation within a particular community of interest. In one embodiment, the intensity of an alert is decreased if it is determined that the alerting party has provided unhelpful or erroneous alerts in the past, or if it is determined that the alerting party cannot be trusted as much as other alerting parties for other reasons, such as reputation in the relevant community. In one embodiment, it is possible to provide both an active alert by selecting an alert button and to provide a passive alert by merely accessing a URL with respect to which an alerting party previously submitted an active alert. In one embodiment, an active alert is assigned a higher intensity value than a passive alert. For example, a passive alert may be arbitrarily assigned a baseline intensity value of 0.3 and an active alert a baseline intensity value of 0.5. For an active alert, 0.1 could be added for each of the following conditions that is satisfied by the alert: an interest category selection was included in the alert; a caption was included in the alert; and/or the source of the alert is particularly trusted. Conversely, 0.1 could be subtracted from the intensity of an alert from a source known to be unreliable. Alternatively, alerts from sources known to be unreliable may be blocked and not assigned any intensity value.

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	No extrinsic evidence identified.	The process illustrated in FIG. 6 continues with step 604 . . . ") Original claims of purportedly incorporated '518 application Original claims of purportedly incorporated '346 application '682 Patent Prosecution History April 9, 2003 Office Action. Exhibit B-1 at IL_DEFTS0008328. July 7, 2003 Amendments and Remarks ("Therefore, claim 1 requires that the indication that the item is of current interest come from a source other than the participant who is informed that the item is of current interest, whereas Eichstaedt teaches learning from a user's own past actions what is of interest to that user. See, e.g., and without limitation, Application at p. 9, line 13 — p. 11, line 15;p. 13, lines 1-5; p. 24, lines 1-9; and Figure 1 (noting in particular the distinction between the alerting user 102 and the participant 104).") Exhibit B-1 at IL_DEFTS0008596. September 16, 2003 Office Action at 9 ("In response, Examiner maintains that Eichstaedt discloses such wherein analyzer and profile generator generates a profile used to provide customized information is deemed to be from the profile as the source not directly from the participant in one embodiment; See 3:8-25.") Exhibit B-1 at IL_DEFTS0008607. Nov. 28, 2003 Amendment and Remarks at 8 ("The rejection is respectfully traversed. As amended, claim 1 recites "...determining an intensity value to be associated with the indication and an intensity weight value, and adjustingthe intensity value based on a characteristic for the item provided by the source...." Eichstaedt et al. discloses ranking categories and generating profiles, but based on feedback from the user following interaction with an item. (Col. 3, lines 28-67). The weight of a category is based onthe number of user clicks on a document or actions expressed by the user. (Col..3, lines

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		52-54). Eichstaedt et al. does not disclose an intensity value adjusted based on a characteristic for an item provided by a source, as in the claimed invention. Thus, claim 1 is allowable for the reasons stated above.") Exhibit B-1 at IL_DEFTS0008620. Extrinsic Evidence: *Webster's Ninth New Collegiate Dictionary © 1985* • adjust: o **1a.** to bring to a more satisfactory state: (1): SETTLE RESOLVE (2): RECTIFY o **1c.** to bring the parts of to a true or more effective relative position <~ a carburetor> • characteristic: o **1.** a distinguishing trait, quality, or property *The American Heritage Dictionary of the English Language*. 4th ed. 2000. • adjust: o **1.** To change so as to match or fit; cause to correspond. o **2.** To bring into proper relationship. o **4.** To bring the components of into a more effective or efficient calibration or state: *adjust the timing of a car's engine.* • characteristic: o **1.** A feature that helps to identify, tell apart, or describe recognizably; a distinguishing mark or trait. *Oxford English* Dictionary, second edition (1989) • adjust: "**1. a.** To arrange, compose, settle, harmonize (things that are or may be contradictory, differences, discrepancies, accounts). To adjust *an average*" • characteristic: "**1.** A distinctive mark,

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		trait, or feature; a distinguishing or essential peculiarity or quality." **Terveen Report, ¶¶ 31.** 31. "The later-added claim language recites, in part: (i) "determining" an intensity value to be associated with the indication and (ii) then "adjusting" that intensity value. A PHOSITA in 2000 would not have understood "intensity value to be associated with the indication" to have an accepted meaning in the art and, therefore, would also not have understood "determining" and "adjusting" of such an "intensity value" as having an accepted meaning in the art.
Term 5 **[inform / informing] the participant** Found in claims: 1, 2, and 3	**[inform/informing] the participant** <u>Proposed Construction:</u> No construction of "inform/informing" is needed. "participant" = the user who receives an indication that the item is of current interest <u>Intrinsic Evidence:</u> Figs. 1, 2B, 5, 7, 11 "More specifically, [the invention relates to] alerting users to dynamic content accessible via a communications or computer network that is of interest at the time of the alert is disclosed." 1:25-28. "[T]his proliferation of content, such as audio, image, and video content, presents certain challenges from the perspective of users seeking content of current interest. First, the shear volume of content available makes it difficult for users to find the content in which they are most interested in accessing at any given time." 1:41-46. "[T]here is a need to provide a way to become aware that dynamic web content or an electronic resource other than web content is of interest at a given time, and to quantify the degree or level of current interest." 2:10-14.	**[inform/informing] the participant** <u>Proposed Construction:</u> Alert a user who has expressly requested such alerts. <u>Intrinsic Evidence</u>: '682 Patent Title, 1:1-2 ("ALERTING USERS TO ITEMS OF CURRENT INTEREST") '682 Patent 1:22-27 ("FIELD OF THE INVENTION: The present invention relates generally to communications and computer networks. More specifically, alerting users to dynamic content accessible via a communications or computer network that is of interest at the time of the alert is disclosed.") '682 Patent 1:47-53 ("much of the content of potentially greatest interest, at least to many users, is dynamic. At certain times, a file or other electronic resource may be of great interest while at other times, or perhaps even most of the time, it is not of great interest or not interesting at all.") '682 Patent 1:58-2:6 ("A webcam might be used, for example, to provide images of a watering hole in Africa. Typically, users would access a website associated with the webcam to view activity at the watering hole. However, there would be many periods during which nothing of particular interest (e.g., no animals,

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	"A detailed description of a preferred embodiment of the invention is provided below. While the invention is described in conjunction with that preferred embodiment, it should be understood that the invention is not limited to any one embodiment. On the contrary, the scope of the invention is limited only by the appended claims and the invention encompasses numerous alternatives, modifications and equivalents. For the purpose of example, numerous specific details are set forth in the following description in order to provide a thorough understanding of the present invention. The present invention may be practiced according to the claims without some or all of these specific details" 3:62-4:6. Fig. 3. *See also* 5:57-63. "In one embodiment, a request is sent to the application server automatically at predetermined intervals. The request contains the interest categories that are in the selected state at the time the request is sent. In one embodiment, the display 1100 includes a submit button (not shown in FIG. 11) that, when selected causes a request containing the interest categories selected by the participant at the time to be posted to the application server via the Internet." 11:40-47 "Although the foregoing invention has been described in some detail for purposes of clarity of understanding, it will be apparent that certain changes and modifications may be practiced within the scope of the appended claims. It should be noted that there are many alternative ways of implementing both the process and apparatus of the present invention. Accordingly, the present embodiments are to be considered as illustrative and not restrictive, and the invention is not to be limited to the details given herein, but may be modified within the scope and equivalents of the appended claims." 14:12-21. "Accordingly, alerting users of items of current interest is disclosed. The level of current interest of a particular file or other electronic resource is determined based on indications received from alerting users. One	etc.) would be happening at the watering hole. Conversely, there would be occasional periods when activity of great interest would be occurring, such as the presence of a rare or endangered animal at the watering hole. Users would have no way of knowing when such activity would be occurring, and might miss the most interesting images if they did not happen to check the website at the right time. The same problems arise with respect to files or other electronic resources other than webcam content provided via the World Wide Web, including other media such as audio.") '682 Patent 2:7-20 (". . . there is a need to provide a way to become aware that dynamic content or an electronic resource other than web content is of interests at a given time, and to quantify the degree or level of current interest. In addition, there is a need to consider the interests of a user when determining which web content or other electronic resources likely will be of the greatest interest to the user. '682 Patent, 2:14-17 ("There is also a need to insure that users receive alerts with respect to web content or other electronic resources that are of interest only to a relatively small community of users, or that are of interest on only relatively rare or infrequent occasions.") '682 Patent 2:30-33 ("Accordingly, alerting users of items of current interest is disclosed. The level of current interest of a particular file or other electronic resource is determined based on indications received from alerting users. One or more users receive an alert that the item is of current interest.") '682 Patent 2:48-53 ("Disseminating to a participant an indication that an item accessible by the participant via a network is of current interest is disclosed. In one embodiment, an indication that the item is of current interest is received in real time. The indication is processed. The participant is informed that the item is of current interest.") '682 Patent 3:9-12 ("to alert users to dynamic content of interest at the time of the alert (also referred to herein as an 'item of current interest')")

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	or more users receive an alert that the item is of current interest." 2:30-34. "Disseminating to a participant an indication that an item accessible by the participant via a network is of current interest is disclosed . . ." 2:47-65. "As indicated in FIG. 1, an alert sent by an alerting user includes, in one embodiment, at least the URL of the web content considered by the alerting user to be of current interest. . . . the alerting user may provide text indicating what the alerting user believes to be of current interest in the web content." 5:4-12. '682 File History, April 9, 2003 Office Action, at 3 (noting that documents viewed in Eichstaedt were of current interest) Exhibit B-1 IL_DEFTS0008325 at 8327; *see also* September 16, 2003 Office Action, at 3 (same) Exhibit B-1 IL_DEFTS0008598 at 8600. Provisional Application to the '682 Patent (No. 60/178627), at 3 ("In one embodiment, a 'Hot Now' virtual pushbutton is present on a user's web display. When the user sees something they feel is of interest, they press the button. Pressing the Hot Now button sends an alert message to everyone using the infrastructure who has indicated that such alerts are of interest to them (based upon factors described below). Along with the alert message a link to the website of interest is provided, and alerted users can chose [sic] to go there. If they also believe the site is currently interesting, they can press their Hot Now button and further propagate the alert."); *see also* 9 ("For example, the system may be used to provide and alert when someone finds anything on the Web that is timely and worthy of alerting others who have expressed interest, such as auctions.") Exhibit B-1 page 122 non Bates. <u>Extrinsic evidence:</u> Webster's New World College Dictionary, 4th ed. at 355 (defining "current" as "at the present time; contemporary") The American Heritage Dictionary of the	'682 Patent, 3:50-55 ("FIG. 10 is a flowchart illustrating a process used in one embodiment to disseminate an alert to a participant, as in step 306 of FIG. 3. FIG. 11 shows an exemplary participant display 1100 used in one embodiment to disseminate alert information to a participant.") '682 Patent, 4:20-25 ("participant 104 provides an indication of the participant's interests and receives a list of URLs providing the location of dynamic content") '682 Patent, 4:55-56 ("In one embodiment, when a request from a participant for a list of URLs for items of current interest is received . . .") '682 Patent, Fig. 10 step 1002 ("Receive request with interest filter selections") '682 Patent 10:58-11:3 ("FIG. 10 is a flowchart illustrating a process used in one embodiment to disseminate an alert to a participant, as in step 306 of FIG. 3. The process begins with step 1002 in which a request containing interest category filter selections made by the participant is received. . . . Next, in step 1008, a list of hot URLs responsive to the request is built. Finally, in step 1010, the list of hot URLs responsive to the request is sent to the participant.") '682 Patent Figure 11 '682 Patent 11:4-60 (". . . selection area 1106 in which interest categories are listed along with a check box for each category listed. The participant selects the check box for each interest category for which the participant would like URLs of current interest to be included in the participant's hot list. . . .") <u>Provisional App</u> Provisional App. at Summary ("While dozens of web cam portals and directories exist, none are capable of propagating an alert that 'something interesting is happening now,' to the right people. To solve this problem, a real time meta-data happening infrastructure allowing people who see interesting occurrences to alert other

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	English Language, 4th ed. (2000) at 446 (defining "current" as "belonging to the present time" or "prevalent, especially at the present time") Webster's Ninth New Collegiate Dictionary (1985) at 316 (defining "current" as "presenting elapsing" and "occurring in or existing at the present time"). Declaration of William Mangione-Smith, ¶¶ 5, 7 (opining that claims should not be limited to a preferred embodiment)	interested parties is disclosed. The system is referred to as "Hot Now."") Exhibit B-1 at IL_DEFTS0009125. Provisional App. at 2.1 ("Along with the alert message a link to the website of interest is provided, and alerted users can chose to go there. If they also believe the site is currently interesting, they can press their Hot Now button and further propagate the alert.") Exhibit B-1 at IL_DEFTS0009127. Provisional App. at Sec. 2.1 ("Hot Now is based around a unique meta-data infrastructure that allows people who are first to see an interesting web video event to propagate an alert to others who may find the event interesting, and to do it as fast as the Internet will allow.") Exhibit B-1 at IL_DEFTS0009127. Provisional App. at Sec. 2.1 ("Pressing the Hot Now button sends an alert message to everyone using the infrastructure who has indicated that such alerts are of interest to them (based upon factors described below)."). Exhibit B-1 at IL_DEFTS0009127. Provisional App. at Sec. 2.3.3 ("Heat Threshold has two components: "heat sensitivity" determines the number of alerts required to announce an event to the user; "cooling" determines the duration after which an event will no longer be announced to the user." . . .). Exhibit B-1 at IL_DEFTS0009129. Provisional App. at Sec. 2.3.3 ("Each user selects a series of interest groups and sets a sensitivity threshold for each selected group."). Exhibit B-1 at IL_DEFTS0009130. Provisional App. at Sec. 5 ("For example, a Hot Now button on a remote control with 4 categories to select (e.g. nudity, funny moments, news flashes, and sports climaxes) and only 1 hierarchical level (top level is general interest) may be implemented.") Exhibit B-1 at IL_DEFTS0009133. Extrinsic evidence: *The American Heritage Dictionary of the English Language*. 4th ed. 2000.

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		• participant: One that participates, shares, or takes part in something. • participate: To take part in something: *participated in the festivities.* • current: "1a. Belonging to the present time: *current events*; *current leaders*. b. Being in progress now: *current negotiations*." *Webster's Ninth New Collegiate Dictionary © 1985* • participant: one that participates • participate: o 2a. to take part < always tried to ~ in class discussions> o 2b. to have a part or share in something • current: o 1b(1): presently elapsing o 1b(2): occurring in or existing at the present time *Oxford World Dictionary* • current: "belonging to the present time; happening or being used or done now: *keep abreast of current events*; *I started my current job in 2001*" **Terveen expert report, ¶¶ 23, 25, 26:** 23. Timeliness Requirement. The system disclosed in the '682 application deals with "dynamic" electronic content available for transmission over the network that may be of great interest at one moment, but of no interest shortly thereafter. (E.g., '682 patent at 1:24-28, 1:46-52). It would have been apparent to a PHOSITA in 2000 that the system must be able to compute and disseminate "current interest" notifications concerning this dynamic content in a timely manner. The type of dynamic content that is the object of the invention (e.g., '682 patent at 1:53-2:47 ("the presence of a rare or endangered animal at the watering hole" which is being monitored by a webcam)) will be of interest only for short periods of time. The purpose of the alleged invention would be defeated if notifications are not computed and disseminated during the brief period of time before a currently interesting item becomes uninteresting again.

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
		25. A PHOSITA in 2000 would have understood that the "invention" of the '682 application necessarily processed new alerts and sent new notifications as fast as the available computing resources and the disclosed algorithms permitted in order to increase the chances that the event or content that led to the current-interest alert would still be occurring when the notification participant accessed that dynamic content over the network. (See, e.g., '682 patent at 1:64-2:1 (participants want to know when "activity of great interest . . . would be occurring" so they do not "miss the most interesting images") and 2:7-10 ("As a result there is a need for a way to alert users to web content or other electronic resources available via a communications or computer network that are of interest at a particular time.")). The '682 application discloses no variation in which such processing and notifications are delayed for any reason. 26. The situation of the participant. It would have been apparent to a PHOSITA in 2000 that the disclosed "participant" is connected to a computer network and is interested in receiving notifications of items of current interest that are accessible over the network (e.g., the abstract and Claim 1 in the '682 application), but is not already aware that these items are of current interest. It also would have been apparent to a PHOSITA in 2000 that the '682 application discloses that, before receiving any "current interest" notifications, the "participant" must first indicate at least one "interest category." (See, e.g., '682 patent at Figures 1 and 10-11, 4:20-22, 4:55-56, 10:58-11:3, 13:66-14:2). Webster's online dictionary: Participant: "one that participates" participate: (a.) "to take part"; (b.) to have a part or share in something.
Term 6 **a computer**	**a computer configured to receive in real time . . . process the indication; determine an intensity value . .. and adjusting the**	**a computer configured to receive in real time . . . process the indication; determine an intensity value . .. and adjusting the intensity**

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
configured to receive in real time . . . process the indication; determine an intensity value . .. and adjusting the intensity value . . . and inform the participant that the item is of current interest Found in claims: 1	**intensity value . . . and inform the participant that the item is of current interest** Proposed Construction: Not governed by 112/6. No additional construction necessary. No extrinsic evidence identified. No intrinsic evidence identified.	**value . . . and inform the participant that the item is of current interest** Proposed Construction: This is a means-plus-function limitation. **Function**: The entire body of claim 1 appearing after "a computer configured to" and before "a database . . ." is a recited function of the recited "computer." **Structure, Material, or Act:** The specification recites an "application server 106" configured to perform some of the claim-recited function, by implementing the algorithms disclosed in the following figures and text of the patent: Fig. 1 and 4:11-5:12, Fig. 2A, Fig. 2B and 5:44-55, Fig. 3 and 5:57-63 and Fig. 4 and 5:64-6:16) ("receive …"); 4:44-47, Fig. 6 and 6:51-7:35 ("process …"); Fig. 6 (step 602) and 6::52-7:23 ("determining an intensity value"); and Fig. 1, 4:55-5:3, Figs. 10-11, 10:58-11:55 ("inform…"). The specification discloses no structure (algorithm) for the remaining portions of the claim-recited function (e.g., ". . . intensity weight value") (this claim thus violates Sec. 112, ¶¶ 2, 6). *See also* Fig. 1 and 4:25-32 Intrinsic evidence: '682 patent, Figures 1, 2A, 2B, 3, 4, 6, 10-11 '682 patent, 4:11-5:12, 4:44-47, 4:55-5:3, 5:44-55, 5:57-63, 5:64-6:16, 6:51-7:35, 10:58-11:55
Term 7 **computer instructions for receiving in real time . . . processing the indication; determining an intensity value . .. and adjusting the intensity value . . . and informing the**	**computer instructions for receiving in real time . . . processing the indication; determining an intensity value . .. and adjusting the intensity value . . . and informing the participant that the item is of current interest** Proposed Construction: Not governed by 112/6. No additional construction necessary. No extrinsic evidence identified.	**computer instructions for receiving in real time . . . processing the indication; determining an intensity value . .. and adjusting the intensity value . . . and informing the participant that the item is of current interest** Proposed Construction: This is a means-plus-function limitation. **Function**: The entire body of claim 2 after "computer instructions for" is a recited function of the recited "medium."

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
participant that the item is of current interest Found in claims: 2	No intrinsic evidence identified.	**Structure, Material, or Act:** A computer readable storage medium with instructions for performing the algorithms depicted in the following Figures of the patent and described in the accompanying text of the patent specification:: Fig. 1 and 4:11-5:12, Fig. 2A, Fig. 2B and 5:44-55, Fig. 3 and 5:57-63 and Fig. 4 and 5:64-6:16) ("receiving …"); 4:44-47, Fig. 6 and 6:51-7:35 ("processing …"); Fig. 6 (step 602) and 6::52-7:23 ("determining an intensity value"); and Fig. 1, 4:55-5:3, Figs. 10-11, 10:58-11:55 ("informing …"). The specification discloses no structure (algorithm) for the remaining portions of the claim-recited function (e.g., ". . . intensity weight value") (this claim thus violates Sec. 112, ¶¶ 2, 6). *See also* Fig. 1 and 4:25-32 Intrinsic evidence: '682 patent, Figures 1, 2A, 2B, 3, 4, 6, 10-11 '682 patent, 4:11-5:12, 4:44-47, 4:55-5:3, 5:44-55, 5:57-63, 5:64-6:16, 6:51-7:35, 10:58-11:55
Term 8 **Claims 3-9, 11-13, 16-17, 20 as a whole.**	**Claims 3-9, 11-13, 16-17, 20 as a whole.** Proposed Construction: The determination of whether a claim recites patentable subject matter is a matter of statutory interpretation that is not properly resolved as part of the *Markman* briefing process. *See In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008) (en banc). Defendants' "proposed construction"—which is not a claim construction at all—does not comply with Patent Local Rule 132 (Joint Claim Chart must include "[e]ach party's proposed construction of each disputed claim term, phrase, or clause") or the Court's Standing Order for Patent Cases (Joint Claim chart must include "each party's proposed construction of disputed terms"). Moreover, proposed constructions for many of the terms and phrases that are part of the "claims as a whole" are separately provided herein.	**Claims 3-9, 11-13, 16-17, 20 as a whole.** Proposed Construction: These claims are directed to an abstract idea and do not require a particular machine or particular transformation of a particular article. To the extent these claimed "methods" can be performed, each (except claim 17) could be performed by humans without using any machine or device. "[C]laim construction . . . is an important first step in a § 101 analysis" to determine whether "the claim as a whole" is directed to patent-eligible subject matter. *In re Bilski*, 545 F.3d 943, 951, 959 (Fed. Cir. 2008) (en banc), *aff'd sub nom*, *Bilski v. Kappos*, 130 S. Ct. 3218 (2010); *see generally Power Mosfet Technologies, L.L.C. v. Siemens AG*, 378 F.3d 1396, 1404 (Fed. Cir. 2004) ("The terms in the Special Master Report were construed in isolation, and at no other time did the district court or the Special Master construe the claims

Claim Language (Disputed Terms in **Bold**) '682 patent	Plaintiff's Proposed Construction and Evidence in Support[2]	Defendants' Proposed Construction[3] and Evidence in Support[4]
	No intrinsic evidence identified. No extrinsic evidence identified.	as a whole."); *id.* at 1410 (This "limited construction left substantial ambiguity as to the meaning of the claims as a whole…."); *id.* at 1412 ("[A] construction of the claims as a whole would have been beneficial to the litigants."). Intrinsic evidence: '682 patent '682 patent 1:23-28 ("FIELD OF THE INVENTION: The present invention relates generally to communications and computer networks. More specifically, alerting users to dynamic content accessible via a communications or computer network that is of interest at the time of the alert is disclosed.") '682 patent, claims 3-9, 11-13, 16-17, 20 '682 patent 14:15-17 ("It should be noted that there are many alternative ways of implementing both the process and apparatus of the present invention.")