

**From:** Jeanette Burns [<mailto:jburns@lodsys.com>]  
**Sent:** Friday, August 23, 2013 1:46 PM  
**To:** Hoffman, Allison  
**Cc:** Mark Small  
**Subject:** Lodsys Group - Crib Sheet

Dear Allison,

Nice to meet you and we appreciate your time on on the call today. As we discussed, attached is the crib sheet on the parties' respective claim construction positions.

I will check back with you the second week of September. In the meantime, I hope you have a great vacation.

Best,

Jeanette

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# EXHIBIT A

**Claim Construction Chart**

1. “units of a commodity” / “commodity” / “product”

Disputed Term	Claim Nos.	Lodsys’s Proposal*	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“units of a commodity”	’078: 1, 11, 27, 28, 38, 39, 60, 69, 74	“instances of a product or a service”	“standalone physical goods that are bought or sold”	specific physical goods used alone or in connection with a service	
“commodity”	’078: 1, 3-5, 10-13, 19, 22, 24, 25, 27, 28, 32, 33, 38, 39, 40, 44, 47, 50, 51, 52, 60, 63, 64, 67, 68, 69, 73, 74	This term should be construed within the entire phrase “units of a commodity.” If the Court determines this term should be separately construed: “product or service”	“a standalone physical good that is bought or sold”	Physical goods used alone or in connection with a service	
“product”	’565: 1, 5, 7, 8, 10, 13, 15, 17, 19, 20, 22, 25-28	No construction necessary If the court determines this term should be construed: “item or service, including hardware or software,	“a standalone physical good that is bought or sold”	Claim 1, 5, 8, 10, 13: A product is not the same as the unit. Claim 14, 17, 19, 20, 22, 25, 26: A product is distinct from the device that is performing	

\* Plaintiff Lodsys, LLC and Lodsys Group, LLC objects to, and reserves the right to move to strike, the new positions taken and new constructions offered, for the first time, by Kaspersky Lab, Inc. in this Joint Claim Construction Chart as contrary to Kaspersky’s obligations and disclosures under P. R. 4-1, 4-2, and/or 4-3.

Disputed Term	Claim Nos.	Lodsys's Proposal*	Defendants' Proposal	Kaspersky's Proposal	Court's Construction
	'908: 37	provided to a user"		the method steps. Claim 27 and 28: A product is distinct from the executable code and from the computing device.	

2. "user interface"

Disputed Term	Claim Nos.	Lodsys's Proposal	Defendants' Proposal	Kaspersky's Proposal	Court's Construction
"user interface"	'078: 1, 2, 4, 8, 16, 17, 19, 30, 38, 60, 65, 66, 69, 74 '565: 1, 15, 27 '908: 37	No construction necessary If the Court determines this term should be construed: "the user interfaces is where interaction between a user and a unit occurs"	"the hardware and corresponding software in the [product/commodity/ computer product] that enables interaction between the user and the [product/commodity/ computer product]"	"where interaction between humans and machines occurs, accomplished by a hardware device with corresponding software	

3. “a memory within each of the units of a commodity”

Disputed Term	Claim Nos.	Lodsys’s Proposal*	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“a memory within each of the units of the commodity”	’078: 1	“memory allocated to each of the units of the commodity”	“a memory physically located within each of the units of the commodity”	Same as Defendants	

4. “user[s] perception of the commodity” / “information regarding a use of the product”

Disputed Term	Claim Nos.	Lodsys’s Proposal*	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“user[s] perception of the commodity”	’078: 1	No construction necessary If the Court determines this term should be construed: “user[s] opinion about the commodity, including attitude, needs, desires, uses, understanding, and complaints with respect to the commodity”	“user[s] opinion about the commodity formed from prior use of the commodity” Defendants are alternatively agreeable to use of the term “actual” in place of “prior” in the claim construction.	<u>Proposal 3</u> : “the user[s] opinion about the commodity formed from use of the commodity, which does not include opinions on any content delivered by the commodity”  Opinion about a commodity is not elicited simply by offering the commodity for sale.	
“information regarding a use of the product”	’565: 1, 15, 27	No construction necessary	“information regarding prior use of the product”	Information regarding how a product is used.	

5. “perception information”

Disputed Term	Claim Nos.	Lodsys’s Proposal	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“perception information”	’078: 69	This term is not indefinite under 35 U.S.C. § 112(2). No construction necessary. This term is substantially identical to the term “information about the user’s perception of the commodity” in Claim 1.	This term is indefinite under 35 U.S.C. § 112(2)	This term is indefinite under 35 U.S.C. § 112(2)	

6. “elicit” / “probe”

Disputed Term	Claim Nos.	Lodsys’s Proposal*	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“elicit”	’078: 1, 22, 38, 60, 69, 74	No construction necessary	“actively request”	“Ask for”	
“probe”	’565: 1, 15, 27	No construction necessary	“actively request”	“Ask for”	

7. “component capable of managing the interactions of the users in different locations and collecting the results of the interactions at the central location”

Disputed Term	Claim Nos.	Lodsys’s Proposal*	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“component capable of managing the interactions of the users in different locations and collecting the results of the interactions at the central location”	’078: 1, 60	This term is not governed by 35 U.S.C. § 112(6). Nevertheless, in the event the Court holds that § 112(6) governs this term, the term is not indefinite under 35 U.S.C. § 112(2), as the specification discloses sufficient structure, referenced in the Joint Claim Construction and Prehearing Statement [Dkt. No. 505].	This term is a means plus function limitation subject to 35 U.S.C. § 112, ¶ 6 and is indefinite under 35 U.S.C. § 112(2). <u>Function</u> : managing the interactions of users in different locations and collecting the results of the interactions at the central location <u>Corresponding Structure</u> : none for “managing the interactions of the users in different locations”	Same as Defendants.	

8. “two-way local interaction”

Disputed Term	Claim Nos.	Lodsys’s Proposal*	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“two-way local interaction”	’078: 1, 24, 25, 46, 48, 49, 52, 60 ’908: 37	“interactions between the user and the unit at the user’s location”	“two-way communication in the same physical location” Defendants are alternatively agreeable to use of the term “interaction” in place of “communication” in the claim construction.	“interaction between a unit of the commodity and the user by way of the user interface in the same physical location.”	

9. “trigger event”

Disputed Term	Claim Nos.	Lodsys’s Proposal	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“trigger event”	’565: 1, 5, 7, 8, 10, 14, 15, 17, 19, 20, 22, 26, 27, 28	“occurrence of a recognizable condition”	“an event that initiates an action”	Same as Defendants	

10. “counter” / “increment a counter” / “if the counter exceeds a threshold”

Disputed Term	Claim Nos.	Lodsys’s Proposal	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“counter”	’565: 1, 5, 6, 14, 15, 17, 18, 26-29	“a memory location for storing values that represent the number of occurrences of an event”	“an instrument for storing integers permitting them to be increased sequentially to represent the number of occurrences of an event”	Same as Defendants	
“increment a counter”	’565: 1, 14, 15, 27	“update a counter to reflect an increase in the number of occurrences of an event”	“to sequentially increase the numeric value of a counter”	Same as Defendants	
“if the counter exceeds a threshold”	’565: 1, 15, 27	“if the counter’s value meets a predefined criteria”	“only when the counter exceeds a predetermined value”	Same as Defendants	



11. “forwarding the input” / “a priority code associated with the input”

Disputed Term	Claim Nos.	Lodsys’s Proposal	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“forwarding the input”	’565: 16	No construction necessary	“transmitting the input from the server to a destination other than the product”	Not proposed for construction because claim 16 is not asserted against Kaspersky.	
“a priority code associated with the input”	’565: 16	No construction necessary If the Court determines this term should be construed: “a property indicative of the input”	“information received from the product that indicates the priority of the input”	Not proposed for construction because claim 16 is not asserted against Kaspersky.	

12. “passive probe” / “server” / “communication element” / “memory”

Disputed Term	Claim Nos.	Lodsys’s Proposal*	Defendants’ Proposal	Kaspersky’s Proposal	Court’s Construction
“passive probe”	’078: 5	No construction necessary	No further construction necessary	“a device or a program that gathers information about a unit of a commodity without asking the user”	
“server”	’078: 7, 62 ’565: 1, 15, 18, 27, 29	No construction necessary	No construction necessary	“a computer that is distinct from the unit of a commodity (’078 patent). A computer that is distinct from the unit or product or computing device (’565 patent).”	
“communication element”	’078: 1, 5, 51, 60	No construction necessary	No construction necessary	“a hardware device that allows transmission of data	

Disputed Term	Claim Nos.	Lodsys's Proposal*	Defendants' Proposal	Kaspersky's Proposal	Court's Construction
"memory"	'078: 1 '565: 1, 6	No construction necessary	No construction necessary	"physical device used to store programs or data on a temporary or permanent basis for use in a computer or other digital electronic device"	

**13. "interaction scripts" / "carrying information about the value to users of using the product"**

Disputed Term	Claim Nos.	Lodsys's Proposal	Defendants' Proposal	Kaspersky's Proposal	Court's Construction
"interaction scripts"	'908: 37	"instructions for the display of interactive content"	This term is indefinite under 35 U.S.C. § 112(2)	No assertion because the '908 patent is not asserted against Kaspersky.	
"carrying information about the value to users of using the product"	'908: 37	No construction necessary	"containing users' subjective opinions about the value of using the product"	Not proposed for construction because the '908 patent is not asserted against Kaspersky.	

**14. "a transaction for sale of a product or a service contract for the commodity"**

Disputed Term	Claim Nos.	Lodsys's Proposal*	Defendants' Proposal	Kaspersky's Proposal	Court's Construction
"a transaction for sale of a product or a service contract for the commodity"	'078: 24	"a transaction for sale of a product for the commodity or a service contract for the commodity"	No construction necessary	The transaction for sale of a product need not be "for the commodity."	

15. “predefined plurality of trigger events” / “configured” / “results” / “central location” / “medium”

Disputed Term	Claim Nos.	Lodsys's Proposal	Defendants' Proposal	Kaspersky's Proposal	Court's Construction
“predefined plurality of trigger events”		[AGREED]	[AGREED]	[AGREED]	No construction necessary
“configured”		[AGREED]	[AGREED]	[AGREED]	No construction necessary
“results”		[AGREED]	[AGREED]	[AGREED]	No construction necessary.
“central location”		[AGREED]	[AGREED]	[AGREED]	No construction necessary.
[user interface configured to provide a] “medium”		[AGREED]	[AGREED]	[AGREED]	No construction necessary.