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and BANK OF AMERICA, N.A.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NANTWORKS, LLC, a Delaware limited liability company, and NANT HOLDINGS IP, LLC, a Delaware limited liability company,

Plaintiffs,

vs.

BANK OF AMERICA CORPORATION, a Delaware corporation, and BANK OF AMERICA, N.A., a national banking association,

Defendants.

Case No. 2:20-cv-07872-GW-PVC

DEFENDANTS BANK OF AMERICA CORPORATION AND BANK OF AMERICA, N.A.'S SUPPLEMENTAL CLAIM CONSTRUCTION BRIEF

Pursuant to the Court's Order (Dkt. No. 134), Defendants Bank of America Corporation and Bank of America, N.A. (collectively "Bank of America") submit this supplemental claim construction brief to address the relationship between the Asserted Patents and U.S. Patent No. 7,016,532 ("the '532 priority patent"), and the relevance of the '532 priority patent to the construction of the "recognizing" claim terms in the Asserted Patents, as requested by the Court during the *Markman* hearing:

> MR. LOMBARDI: … All of these patents have -- stem from the '532 patent. Every patent in this case incorporates by reference the '532 patent. The '532 patent has the references to … the heart of the present invention that we have been talking about.
>
> And I can go through every single one of the patents, Your Honor, if it would be helpful to Your Honor, and point out what the claims are and the fact that the present invention is the database as referred to in those patents, but it's there for every single patent here.
>
> These patents are all from the same family and they all have the same language about the present invention involving the database.
>
> Would you like me to go through other claims or is that point sufficient?
>
> THE COURT: I will allow you to file a supplemental on that. There is no sense in going through them all one at a time at this point in time. I allow to you file a supplement on that, I will give the plaintiff's counsel an opportunity to respond.

Markman Tr. (Sept. 23, 2021), 19:15–20:12. As shown below, the '532 priority patent includes the same or similar disclosures regarding "the present invention," "the heart of the present invention," and the "novel aspects of the present invention" that Bank of America relies on for its proposed constructions of the "recognizing" terms. Because the Asserted Patents claim priority to and incorporate the '532 priority patent, these disclosures are intrinsic evidence and proper to consider in construing the "recognizing" terms.[1]

[1] Bank of America understands that NantWorks believes it is entitled to address more issues in its supplemental brief beyond what this Court allowed. Bank of America disagrees with NantWorks's position and objects to NantWorks's inclusion of any issues beyond what this Court expressly authorized at the *Markman* hearing.

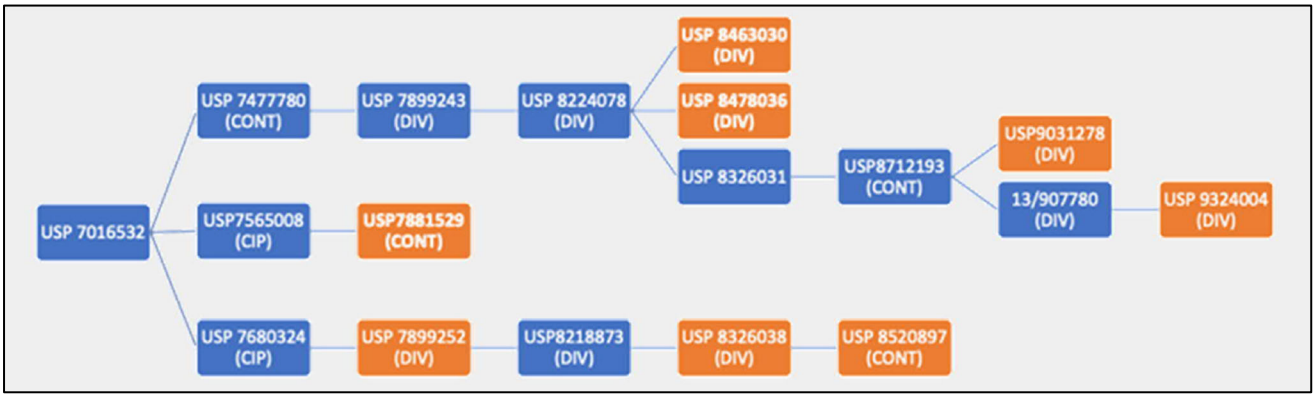
A. Relationship Between the '532 Priority Patent and the Asserted Patents

The '532 priority patent was filed on November 5, 2001 and issued on March 21, 2006. Dkt. No. 111-4, p. 1. As explained in Bank of America's Claim Construction Brief, each Asserted Patent claims priority to the '532 priority patent and incorporates it by reference. Dkt. No. 111, 15 n.8. For example, the asserted '529 patent states:

> This application is a Continuation of U.S. application Ser. No. 11/342,094 filed Jan. 26, 2006 now U.S. Pat. No. 7,565,008, **which is a CIP [Continuation-in-Part] of U.S. application Ser. No. 09/992,942 filed Nov. 5, 2001 now U.S. Pat. No. 7,016,532**, which claims priority to U.S. Provisional Application No. 60/317,521 filed Sep. 5, 2001, and U.S. Provisional Application No. 60/246,295 filed Nov. 6, 2000. **These and all other extrinsic references are incorporated herein by reference in their entirety**.

Dkt. No. 40-1 ('529 patent), 1:4–11. The other Asserted Patents also claim priority to and incorporate the '532 priority patent. *See* Dkt. No. 40-2 ('252 patent), 1:4–22; Dkt. No. 40-3 ('038 patent), 1:4–21; Dkt. No. 40-4 ('030 patent), 1:4–14; Dkt. No. 40-5 ('036 patent), 1:4–17; Dkt. No. 40-6 ('897 patent), 1:4–28; Dkt. No. 40-7 ('278 patent), 1:4–25; Dkt. No. 40-8 ('004 patent), 1:4–25.

This priority relationship is not disputed. As illustrated in NantWorks's tutorial presentation, shown below with the '532 priority patent at the far left and each Asserted Patent highlighted in orange, all Asserted Patents claim priority to the '532 priority patent as a continuation ("CONT"), continuation-in-part ("CIP"), or divisional ("DIV") application:



NantWorks's Tutorial Presentation, Slide 34. Thus, each Asserted Patent claims priority to the '532 priority patent and incorporates the '532 priority patent by reference.

B. The '532 Priority Patent Contains All Disclosures Cited by Bank of America Related to the Construction of the "Recognizing" Terms.

As explained in Bank of America's Claim Construction Brief, the Asserted Patents acknowledge that it was known to modify an object with symbols, such as by applying a barcode, which could then be used to identify the object. Dkt. No. 111, 8. The Asserted Patents thus claim a particular way of identifying an object in an image—using only the visual appearance (e.g., color or shape) of the object in the image, without relying on symbols, to identify the object. *Id*. (citing Dkt. No. 40-5 ('036 patent), 3:26–35, 14:35–40). The Asserted Patents use language like "the present invention" and "the heart of the present invention" to distinguish the invention's way of "recognizing" an object in an image by matching the visual appearance of the object (e.g., color or shape) to images of known objects stored in a database from the prior art. *Id*. (citing Dkt. No. 40-5 ('036 patent), 1:21–24, 5:8–11); *see also Markman* Tr. (Sept. 23, 2021), 39:9–41:9. As such, Bank of America proposes that the "recognizing" terms be construed to require, in part, recognizing an object as a known object using a database to find the best match. Dkt. No. 111, 8–17; *see also Markman* Tr. (Sept. 23, 2021), 41:21–43:13.

The '532 priority patent includes the same or similar disclosures regarding "the present invention," "the heart of the present invention," and the "novel aspects of the present invention" that Bank of America relies on for its proposed constructions of the "recognizing" terms in the Asserted Patents. Dkt. No. 111, 15 n.8. For example, the '532 priority patent explains:

> Many different variations on machine vision "target location and identification" exist in the current art. However, they all tend to provide optimal solutions for an arbitrarily restricted search space. **At the heart of the present invention is a high-speed image matching engine that returns unambiguous matches to target objects contained in a wide variety of potential input images. This unique approach to image matching** takes advantage of the

> fact that at least some portion of the target object will be found in the user-acquired image.

D.I. 111-4, 3:36–45 (emphasis added). Similarly, the '532 priority patent explains:

> **The unique database search methodology and subsequent object match scoring criteria are novel aspects of the present invention that deserve special attention**. Each decomposition of the Reference image and Input image regions represent an independent characterization of salient characteristics of the image. The Wavelet Decomposition, Color Cube Decomposition, Shape Decomposition, and evaluation of a sub-sampled low-resolution Grayscale representation of an input image all produce sets of parameters that describe the image in independent ways. Once all four of these processes are completed on the image to be tested, the parameters provided by each characterization are compared to the results of identical characterizations of the Reference images, which have been previously calculated and stored in the database. These comparisons, or searches, are carried out in parallel. **The result of each search is a numerical score that is a weighted measure of the number of salient characteristics that "match"** (i.e. that are statistically equivalent).

Id. at 10:6–25 (emphasis added); *see also id*. at 1:11–14 ("**The invention** relates [to] an identification method and process for objects from digitally captured images thereof that uses image characteristics to identify an object from a plurality of objects **in a database**."); 4:37–48 ("For object images, **the present invention** performs a 'decomposition' … of a high-resolution input image into several different types of quantifiable salient parameters. This allows for multiple independent convergent search processes **of the database** to occur in parallel, which greatly improves image **match** speed and **match** robustness in the **Database Matching** 36."); 3:11–12 ("FIGS. 3A and 3B are a schematic block diagram of process details of **the present invention**."); 11:3–4 ("FIGS. 3A and 3B show the process flow within the **Database Matching** operation.") (emphasis added throughout).

The other disclosures Bank of America relies on for its proposed constructions (Dkt. No. 111, 8–13) are also included in the '532 priority patent. *Compare* Dkt. No. 40-5 ('036 patent), 1:21–24, 3:26–35, 4:40–41, 5:8–11, 6:4–10, 11:15–34, 12:13–14, Fig. 1, Fig. 3A,

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