

EXHIBIT A

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

E-NUMERATE SOLUTIONS, INC. and
E-NUMERATE, LLC,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

No. 19-859 C

Judge Ryan T. Holte

**SECOND SUPPLEMENTAL DECLARATION OF DR. DAVID MARTIN IN SUPPORT
OF DEFENDANT'S PROPOSED PRELIMINARY CLAIM CONSTRUCTIONS**

TABLE OF CONTENTS

I. Previous Opinions3
A. Disputed Claim Term #1: “markup language”4
B. Disputed Claim Term #13A: “automatically transforming/transformation . . . ”5
C. Disputed Claim Terms 10A-10J: “tag-related terms”.....6
D. Summary of Impact of Court’s Construction on Previous Opinions.....7
II. Terms from the ’383 Patent7
A. “code for identifying a first markup document including first numerical values and first tags reflecting ... associated with the second unit of measure” (claim 1 of the ’383 Patent).....7
B. “code for causing automatic transformation of at least a portion of the first or second numerical values... have a common unit of measure” (claim 1 of the ’383 Patent).....12
C. “code for processing at least a part of the first markup document and at least a part of the second markup document, resulting in a single markup document” (claim 1 of the ’383 Patent)19
III. Signature21

I, David Martin, declare and state as follows:

1. I am over the age of twenty-one, competent to make this declaration and have personal knowledge of the matters stated herein. I make this declaration in support of Defendant United States' ("U.S." or "Government") preliminary claim constructions.

2. This declaration supplements my previous declaration of December 3, 2021, "DECLARATION OF DR. DAVID MARTIN IN SUPPORT OF DEFENDANT'S PROPOSED PRELIMINARY CLAIM CONSTRUCTIONS". I incorporate by reference paragraphs 2-40 of that declaration as if fully set herein. Those paragraphs include my personal background, my understanding of legal standards, background of the technology and patents, and the level of skill in the art. This declaration also supplements my previous declaration of February 11, 2022, "SUPPLEMENTAL DECLARATION OF DR. DAVID MARTIN IN SUPPORT OF DEFENDANT'S PROPOSED PRELIMINARY CLAIM CONSTRUCTIONS".

3. I have reviewed the Court's March 22, 2023 Claim Construction Opinion and Order (ECF 109) ("*Markman* Order") and discuss how it relates to my previous opinions and opinions with respect to terms within claim 1 of U.S. Patent 9,262,383 (the "'383 Patent") below.

I. Previous Opinions

4. Several of the terms for which I previously opined were indefinite from the perspective of a POSITA incorporate terms which the Court has now construed. However, the Court's construction does not impact my ultimate conclusion as to the indefiniteness of those terms, as I explain below.

A. Disputed Claim Term #1: “markup language”

5. The Court construed “markup language” as “Plain and ordinary meaning. Insofar as a definition is needed: A nonprogramming computer language using tags to define elements within a document. Examples of markup languages that existed as of 21 May 1999 include Hypertext Markup Language (HTML), Extensible Markup Language (XML), and Standard Generalized Markup Language (SGML). Extensible Reporting Business Language (XBRL) is an example after 31 July 2000” in the context of Claim 1 of ‘355 Patent. *Markman* Order at *25. The Court also applied this construction in the context of construing the “tags” term across many claims of the asserted patents. *Id.* at 48.

6. I previously opined that the term “markup language” as used in Claim 12 of the ‘816 Patent was indefinite. 12.3.2021 Declaration of Dr. David Martin at ¶¶ 47-52. However, there, “markup language” appears in the context of “*the* markup language” and my argument was based on the ambiguous antecedent basis for “*the* markup language” from base Claim 10 of the ‘816 Patent from which Claim 12 depends. *Id.* Independent Claim 10 recites a “first markup document” and a “second markup document;” therefore the term “the markup language” of Claim 12 could refer to the markup language of the first markup document or the second markup document or of both. *Id.* I did not opine on the construction of “markup language” outside of the antecedent basis issues of ‘816 Patent Claims 10 and 12. *Id.*

7. Given the rationale for my opinion, it remains my opinion that this term, in the context of Claim 12 is indefinite, even if we apply the Court’s construction of “markup language” in the context of Claim 12. Relatedly, the parties briefed this term as “*the* markup language” and my arguments should be directed to that term.

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