

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

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

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

C.A. No. 19-859-RTH

**PLAINTIFFS' REPLY CLAIM CONSTRUCTION BRIEF ON INDEFINITENESS**

Dated: June 1, 2022

Respectfully submitted,

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## I. INTRODUCTION

The Government's arguments based on alleged ambiguity and/or lack of antecedent basis are insufficient to establish indefiniteness under controlling Federal Circuit precedent.

With regard to the '355 patent, the natural and logical reading of "the step of receiving" in claims 15 and 42 makes clear that the step referred to is the step of receiving the tags in independent claims 1 and 28. Claims 15 and 42 both add limitations relating to the "tags" and, as a result, are referring to the step of receiving the tags in the independent claims. In arguing for an indefiniteness finding, the Government ignores the canon of claim construction that claims are to be construed from the perspective of a person of ordinary skill in the art ("POSITA"). In short, there is no reason for a POSITA to read the claim as the Government suggests. The Government's position should be rejected.

Similarly, with regard to the "markup language" limitation in the '816 patent, the Government again ignores the mandate that claims are to be construed from the perspective of a POSITA. Here, the Government and its expert concoct hypotheticals that claim 10 of the '816 patent (from which challenged claim 12 depends) should somehow be read as permitting the first and second markup documents to potentially be in different markup languages. Such an assertion is contrary to the '816 patent specification and common sense. The Government's position should be rejected here as well.

e-Numerate's position on the "means-plus-function" claims at issue is quite clear. The patents disclose use of conversion factors to transform numbers. As a result, the "means for transforming" limitations in the '816 and '383 patents satisfy the algorithm requirement set forth in the relevant case law. At most, the Government is disputing the adequacy of the disclosure,

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