

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NETWORK-1 TECHNOLOGIES, INC.,

Plaintiff,

v.

GOOGLE LLC and YOUTUBE, LLC,

Defendants.

14 Civ. 2396 (PGG)

14 Civ. 9558 (PGG)

**PLAINTIFF NETWORK-1 TECHNOLOGIES, INC.'S
REPLY CLAIM CONSTRUCTION BRIEF**

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I. INTRODUCTION

Defendants do not provide a proposed construction for “non-exhaustive search” or “correlation information,” only asserting these terms render the claims in which they appear indefinite. To prove a claim is indefinite, Defendants have a high burden of proof—clear and convincing evidence, and must also show there are no factual issues precluding summary judgment of invalidity. They fall far short of those burdens.

“Non-exhaustive search” appears in the ’988 patent’s sole asserted claim and in each asserted claim of the ’464 patent. Claim 17 of the ’988 patent further constrains non-exhaustive search: “wherein the non-exhaustive search is sublinear.” Defendants fail to address a “non-exhaustive search” that is “sublinear,” putting forward *no* evidence one of skill in the art would not understand claim 17’s scope. Notably, Google could have raised the indefiniteness of this term in the covered business method (“CBM”) proceeding concerning the ’464 patent before the Patent Trial and Appeal Board (“PTAB”), but chose not to. Instead, Google took the position that no construction was necessary, and applied the same construction Network-1 proposes here.

Defendants posit that because the Federal Circuit held there are two possible reasonable constructions under a different standard than *Phillips* called Broadest Reasonable Interpretation (“BRI”), the term is indefinite. This is an incorrect statement of the law. No case so holds, and there are multiple cases finding different constructions under these different standards without holding the claims invalid for indefiniteness. Defendants also fail to prove both constructions are equally plausible under *Phillips*. Only Network-1’s proposed construction is correct under *Phillips*, in light of the intrinsic and extrinsic evidence (the latter of which was not before the Federal Circuit). The Court should reject Defendants’ indefiniteness challenge and adopt Network-1’s construction of “non-exhaustive search.”

Similarly, the term “correlation information” does not render the claims in which it

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