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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE GOOGLE LITIGATION

No. C-08-03172 RMW

CLAIM CONSTRUCTION ORDER

[Re Docket No. 246]

On November 21, 2007, Software Rights Archive, LLC ("SRA") sued defendants Google Inc., Yahoo! Inc., IAC Search & Media Inc., Lycos, Inc. and AOL, LLC (collectively "defendants") in the Eastern District of Texas. SRA asserts that defendants infringe United States Patent No. 5,544,352 ("352 Patent"), United States Patent No. 5,832,494 ("494 Patent"), and United States Patent No. 6,233,571 ("571 Patent"). On July 21, 2008, defendants filed a declaratory judgment action in this court, alleging non-infringement and invalidity of the same three patents. The Texas action was transferred to this court on July 22, 2010 and then consolidated with the declaratory judgment action. The parties seek construction of claim terms in the asserted patents. The court held a claim construction hearing on April 27, 2011. Per the court's request, the parties filed supplemental briefs on May 9, 2011. The parties have also filed additional briefs addressing the

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**EXHIBIT 2021**

*Facebook, Inc. et al.*

United States District Court  
For the Northern District of California

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1 United States Patent and Trademark Office's ("PTO's") ongoing reexamination of all three patents.  
2 SRA represents that the PTO has now allowed all asserted claims of the '494 and '352 patents  
3 without amendment but has issued a final rejection of the '571 patent.

4 After consideration of the claims, specification, prosecution history, and other relevant  
5 evidence, and after hearing the arguments of the parties, the court now construes the language of the  
6 '494 and '352 patents for which the parties have offered different interpretations. Preliminarily,  
7 however, the court notes that its practice is normally to hear summary judgment motions that turn on  
8 claim construction concurrently with claim construction. The reason is that

9 the legal function of giving meaning to claim terms always takes place in the context  
10 of a specific accused infringing device or process. While a trial court should certainly  
11 not prejudice the ultimate infringement analysis by construing claims with an aim to  
12 include or exclude an accused product or process, knowledge of that product or  
13 process provides meaningful context for the first step of the infringement analysis,  
14 claim construction.

15 *Wilson Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F.3d 1322, 1326-7 (Fed. Cir. 2006).

16 Unfortunately, this practice was not followed here and some of the claim terms were construed  
17 outside the context of the infringement and invalidity issues. The constructions may conceivably  
18 need revision when the court has a better understanding of the accused methods.

#### 19 I. U.S. PATENT NO. 5,544,352

20 The '352 patent, like the other asserted patents, relates to the use of non-semantic link  
21 analysis to enhance computerized searching of electronic databases. According to the "Background  
22 of the Invention," the claims overcome problems associated with "Boolean" searching of document  
23 databases:

24 Current computer search programs use a text-by-text analysis procedure (Boolean  
25 Search) to scan a database and retrieve items from a database. The attorney must  
26 input a string of text, and the computer evaluates this string of text. Then the  
27 computer retrieves items from the database that match the string of text . . . .  
28 However, Boolean searches of textual material are not very efficient.

'352 patent col.1 ll.27-40.

Addressing these issues,

The invention begins with an existing database and indexes the data by creating a  
numerical representation of the data. This indexing technique called proximity  
indexing generates a quick-reference of the relations, patterns, and similarity found  
among the data in the database. Using this proximity index, an efficient search for

1 pools of data having a particular relation, pattern or characteristic can be effectuated.  
2 This relationship can then be graphically displayed.

3 *Id.* at col.3 ll.51-58.

4 Proximity Indexing indexes the data by using statistical techniques and empirically  
5 developed algorithms. The resulting search by an advanced data searching program  
6 of the Proximity Indexed data is significantly more efficient and accurate than a  
7 simple Boolean search.

8 *Id.* at col.4 ll.9-13.

9 Because the asserted patents share many common terms, the disputed claim terms are  
10 construed consistently across the patents. *See NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282,  
11 1293 (Fed. Cir. 2005).

12 **A. "A non-semantic method"**

13 The parties agree that a "non-semantic method" requires the examination of non-semantic  
14 relationships between records (or "objects") in a database. The parties also agree that a "semantic  
15 method" accounts for an object's words or phrases. However, defendants seek a negative limitation  
16 for "non-semantic" that excludes consideration of words or phrases, thus disclaiming word-based  
17 searching. The parties' proposed constructions are as follows:

CLAIM LANGUAGE	SRA'S PROPOSED CONSTRUCTION	DEFENDANTS' PROPOSED CONSTRUCTION
"a non-semantic method"	A method reciting steps that analyze or use non-semantic relationships ( <i>i.e.</i> , citation relationships)	A method of analysis that does not account for phrases and words in a textual object and that is based on explicit references to other textual objects  or  A method of analysis that is based on direct relationships between textual objects and that otherwise does not account for phrases and words in a textual object

18 SRA contends that the claims, specification, and prosecution history of the '352 patent  
19 compel the conclusion that semantic methods based on words and phrases are not excluded from  
20 non-semantic methods. Claim 26 recites the following:  
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1 26. A non-semantical method for numerically representing objects in a computer  
2 database and for computerized searching of the numerically represented objects in the  
3 database, wherein direct and indirect relationships exist between objects in the  
4 database, comprising:

5 marking objects in the database so that each marked object may be  
6 individually identified by a computerized search;

7 creating a first numerical representation for each identified object in the  
8 database based upon the object's direct relationship with other objects in the  
9 database;

10 storing the first numerical representations for use in computerized searching;

11 analyzing the first numerical representations for indirect relationships existing  
12 between or among objects in the database;

13 generating a second numerical representation of each object based on the  
14 analysis of the first numerical representation;

15 storing the second numerical representation for use in computerized  
16 searching; and

17 searching the objects in the database using a computer and the stored second  
18 numerical representations, wherein the search identifies one or more of the  
19 objects in the database.

20 '352 patent claim 26. SRA further points to dependent claim 27 which specifically recites the use of  
21 "semantic indexing techniques" which account for words and phrases in combination with the non-  
22 semantic techniques of independent claim 26:

23 27. The non-semantical method of claim 26, wherein the objects in the database  
24 include words, and **semantic indexing techniques are used in combination with  
25 the non-semantical method, the method further comprising** the step of creating  
26 and storing a boolean word index for the words of the objects in the database.

27 *Id.* at claim 27 (emphasis added). According to SRA, claim 27 recites that the same "non-semantic  
28 method" of claim 26 "further comprises" the creation of a "boolean word index," which necessarily  
accounts for words or phrases in the database. In response, defendants claim that SRA's position  
ignores the "non-" in the claim term itself. Defendants contend that the use of the term "comprising"  
in claim 26 and the addition of semantical steps in dependent claims is not enough to rewrite the  
plain meaning of the "non-" modifier. *See Dippin' Dots, Inc. v. Mosey*, 476 F.3d 1337, 1343 (Fed.  
Cir. 2007) (holding that "comprising" does not "render every word and phrase therein open-  
ended—especially where, as here, the patentee has narrowly defined the claim term it now seeks to  
have broadened").

1 In its supplemental briefing, SRA also contends that this court should give significant weight  
2 to SRA's arguments submitted to the PTO in the co-pending reexamination of all the asserted claims.  
3 The Federal Circuit has instructed courts to "monitor" ongoing reexamination or prosecution activity  
4 "to ascertain whether [the court's] construction of any of the claims has been impacted by further  
5 action at the PTO or any subsequent proceedings." *Proctor & Gamble Co. v. Kraft Foods Global,*  
6 *Inc.*, 549 F.3d 842, 848-49 (Fed. Cir. 2008). SRA also points out that the panel handling the  
7 reexamination of the '352 patent has allowed all of the asserted claims of the '352 patent without  
8 amendment over the prior art that defendants submitted to the PTO. Dkt. No. 373 Ex. 1 at pg. 3.  
9 SRA cites to *Dura Global Techs., Inc. v. Magna Donnelly Corp.*, 2010 WL 4259615, at \*16-18  
10 (E.D. Mich. Oct. 25, 2010) for the proposition that the court should rely on statements made in co-  
11 pending reexamination proceedings, even if they are for the benefit of the plaintiff. In *Dura Global*,  
12 the court relied on statements made by the plaintiff in a reexamination proceeding that a term did not  
13 "exclude pulleys" to reject defendant's construction that required a negative limitation excluding  
14 "pulleys" in the co-pending litigation. *Id.* The court went on to note that the plaintiff's statements in  
15 reexamination did not appear to be self-serving because it was the court's technical advisor, not the  
16 plaintiff, who brought the reexamination statements to the court's attention. *Id.* at 17.

17 In response, defendants argue that because SRA's reexamination statements were filed with  
18 the PTO during litigation, they are merely self-serving and should be accorded little, if any, weight.  
19 *See, e.g., Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1270 (Fed. Cir. 1986) (noting that  
20 papers filed with the PTO during litigation "might very well contain merely self-serving statements  
21 which likely would be accorded no more weight than testimony of an interested witness or argument  
22 of counsel").

23 As the Federal Circuit explained in *Springs Window Fashions LP v. Novo Indus., L.P.*, "[t]he  
24 public notice function of a patent and its prosecution history requires that a patentee be *held to what*  
25 *he declares* during the prosecution of his patent." 323 F.3d 989, 995 (Fed. Cir. 2003) (emphasis  
26 added). Applying this principal, the Federal Circuit has been willing to bind a patentee to its  
27 statements made during prosecution. *See, e.g., id.* (holding patentee to prosecution statements  
28 requiring that cutters be "independently movable"). It does not follow from the use of a patentee's

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