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16   **UNITED STATES DISTRICT COURT**

17   **DISTRICT OF NEVADA**

18

19

20 APPLICATIONS IN INTERNET TIME, LLC,   Civil Action No.: 3:13-CV-00628-RCJ-VPC

                       Plaintiff,
21

22   v.   **PLAINTIFF APPLICATIONS IN
                                            INTERNET TIME, LLC'S REPLY CLAIM
        SALESFORCE.COM, INC.,   CONSTRUCTION BRIEF**
23

                       Defendant.
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1	**I. INTRODUCTION**
2	In its responsive brief, Salesforce complicates the construction of simple, conventional
3	terms by importing limitations from certain embodiments described in the specification, rather
4	than applying the claim language and its common and ordinary meaning. But the claim terms
5	themselves and the principles governing their construction cannot be ignored. The claims
6	measure the invention, not the specification. Claim construction begins and ends in all cases with
7	the literal claim terms. Courts presume that claim terms carry their common and ordinary
8	meaning as understood by a skilled artisan viewing the intrinsic record. This meaning applies
9	unless the patentee gives the term a special definition, narrowly characterizes the invention in the
10	specification using words of exclusion or restriction, or clearly and unmistakably disclaims
11	subject matter in the specification or during prosecution. Salesforce's brief fails to comply with
12	these canons of claim construction.
13	Salesforce's constructions are a study in importing limitations into clear claim language.
14	For most terms, Salesforce skips the claim language and ordinary meaning altogether and
15	proceeds directly to inserting features from specific embodiments and prosecution claims found
16	nowhere in the AIT patents as issued. Salesforce's constructions change the claim language
17	rather than construe it. For example, "automatically detecting" is now detecting *by intelligent*
18	*agents*, "changes that affect" are *regulatory* changes *located in third party repositories.*
19	Salesforce seeks not to construe the meaning of the actual claim language but to add features by
20	reading in limitations found *only* in certain preferred embodiments. But neither the inventors nor
21	the U.S. Patent Office considered Salesforce's imported features critical to patentability, nor
22	would one of ordinary skill in the art in viewing the intrinsic record. This is why *none* of them
23	are recited in the issued claims. The Court should decline Salesforce's invitation to insert them
24	now.
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II.   ARGUMENT

A.   "automatically detect[ing]"

Claim Term / Phrase	AIT Proposed Construction	Salesforce Proposed Construction
"automatically detect[ing]" ('482 claims 1, 21) ('111 claim 13)	"detect[ing] without direct human intervention"	Indefinite, or in the alternative, requiring at least "detect[ing] without any intervention by a human operator through the use of one or more intelligent agents"

1.   Human Intervention

Salesforce's construction of "automatically detecting" is flawed in two respects. First, Salesforce's proposed construction precludes the possibility of even indirect human intervention in the process of "automatically detecting." But software is not entirely autonomous and some level of human interaction with the software is necessary. To at least some extent, a human operator is required to initiate a software process on a machine before the machine can perform any additional functions based on that process. (Rosenberg Reply Decl. at ¶ 27). Salesforce's construction would irrationally exclude all software.

The portions of the specification cited by Salesforce do not support its argument. First, Salesforce selectively quotes a passage in the specification describing that the system "identifies changes using intelligent network agents . . . and automatically effect(s) modifications in the system without the use of programmers and/or programming." (*See* Def. Br. at 12:16-19). But the portion of this passage that Salesforce omits states that this intelligent agent embodiment includes "*recommending modifications to the business content.*" (Boebel Decl., Ex. 1 ('482 patent, at 7:64-65)). In this embodiment, the recommendations are made to *humans*, who must review and approve any such changes before modifications to the system are made "automatically," a process exactly consistent with AIT's proposed construction of "automatically detecting" as "without *direct* human intervention."

Salesforce also cites to a portion of the specification stating that "the invention provides [for] monitoring and assimilating business change into business solutions rapidly, without

1   (re)programming." (*See* Def. Br. at 12:19-22). But this passage says only that a certain *type* of

2   human intervention—(re)programming—*not* that no human intervention of *any type* is involved.

3   While it is certainly true that one of the problems the patents solved was to allow the propagation

4   of software changes "without requiring the services of one or more programmers to re-program

5   and/or recode the software items," that specific form of *direct* reprogramming/recoding human

6   intervention does not preclude the use of any *other* forms of *indirect* human intervention.

7   (Boebel Decl., Ex. 1 ('482 patent, at 8:41-43))

8   Salesforce similarly overstates a statement in the prosecution history where the patentee

9   distinguished a reengineering system disclosed in a prior art patent issued to Eager. In that

10   statement, the patentee merely pointed out that a system in which a human user is *necessary* to

11   "modify application screens and messages" is inconsistent with the claimed system for

12   "automatically detecting changes that affect an application." The patentee never stated that a

13   human user must be *completely excluded* from any indirect involvement in the system to practice

14   the "automatically detecting" limitation of the claim.

15   Finally, Salesforce incorrectly argues that AIT's proposed construction of "automatically

16   detecting" would render the claims indefinite because there is no clear boundary as to what level

17   of human intervention is permitted. But AIT's proposed construction clearly refers to detecting

18   "without *direct* human intervention," which is a concept readily understandable to those of

19   ordinary skill in the art.

20   *2.   Intelligent Agents*

21   Salesforce's proposed construction of "automatically detecting" is also flawed because it

22   would limit the claim to the use of "intelligent agents" to perform the "automatically detecting"

23   operation of the change management layer. But as AIT noted in its opening brief, the

24   specification identifies "intelligent agents" as just one of a variety of possible embodiments of

25   "automatically detecting": "[t]he Change Configuration functions support creation and change of

26   End User functions through a variety of flexible and intelligent manual routines, such as

27   intelligent agents, screens, fields, reports, documents and logic that can be changed without

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1   requiring programming skills." (Boebel Decl., Ex. 1 ('482 patent, at 10:6-14)). Salesforce argues

2   that this disclosure is inapplicable because it discusses only processes that occur after changes

3   have already been detected. But Salesforce is mistaken. This passage specifically refers to,

4   among other things, "intelligent agents," which both parties agree is one embodiment disclosed in

5   the specification that performs the "automatically detecting" operation. Therefore, the passage

6   cannot be interpreted to describe only processes that occur after changes have already been

7   detected.

8   Moreover, as discussed in AIT's opening brief, under the principle of claim differentiation

9   the term "automatically detecting" in claim 1 of the '482 patent cannot be limited to the use of

10   intelligent agents when claim 8, which depends on claim 1, adds the requirement of an

11   "intelligent agent" to detect changes that affect an application. In response, Salesforce cites to

12   cases stating that the doctrine of claim differentiation cannot be used to expand the scope of a

13   claim beyond what is disclosed in the patent. But the specification discloses multiple ways of

14   "automatically detecting" other than through the use of intelligent agents, all of which are covered

15   within the scope of the claims. So AIT's construction does not expand the scope of the claim

16   beyond the patent's disclosure.

17   Absent an express definition in the specification or disclaimer using words of manifest

18   exclusion in the specification or file history, the plain meaning of the claim language, particularly

19   when bolstered by the doctrine of claim differentiation, controls. *Hill-Rom Serv. Inc. v. Stryker*

20   *Corp.*, 755 F.3d 1367, 1371-72 (Fed. Cir. 2014). Disavowal applies only when the language of

21   the specification or prosecution history "make clear" that the invention is restricted to a particular

22   form. (*Id.*). But the language that the Federal Circuit has found to disclaim claim scope is not

23   present here. (*Id.*)(statements such as "the present invention requires ..." or "the present invention

24   is ..." or "all embodiments of the present invention are...."). Salesforce cites various references to

25   "the invention" in the AIT specification, but none of those uses states that any particular

26   implementation or recited feature is "required," "necessary," or otherwise restricts the scope of

27   clear claim language to intelligent agents. In fact, the specific quote that Salesforce relies on to

28   try to import intelligent agents into the claims resides in a section of the specification titled

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