

1 Barry L. Breslow, Esq. (Resident Counsel)  
2 Nevada State Bar #3023  
3 Robison, Belaustegui, Sharp & Low  
4 A Professional Corporation  
5 71 Washington Street  
6 Reno, Nevada 89503  
7 Telephone: (775) 329-3151  
8 Email: [bbreslow@rbsllaw.com](mailto:bbreslow@rbsllaw.com)

9 Steve W. Berman (*pro hac vice*)  
10 Nicholas S. Boebel (*pro hac vice*)  
11 Hagens Berman Sobol Shapiro LLP  
12 1918 Eighth Avenue, Suite 3300  
13 Seattle, WA 98101  
14 Telephone: (206) 268-9320  
15 Emails: [steve@hbsslaw.com](mailto:steve@hbsslaw.com);  
16 [nickb@hbsslaw.com](mailto:nickb@hbsslaw.com)

17 Christopher D. Banys (*pro hac vice*)  
18 Richard C. Lin (*pro hac vice*)  
19 Banys, P.C.  
20 1032 Elwell Court, Suite 100  
21 Palo Alto, CA 94303  
22 Telephone: (650) 308-8505  
23 Emails: [cdb@banyspc.com](mailto:cdb@banyspc.com);  
24 [rcl@banyspc.com](mailto:rcl@banyspc.com)

25 *Attorneys for Plaintiff Applications in*  
26 *Internet Time LLC*

27 **UNITED STATES DISTRICT COURT**  
28 **DISTRICT OF NEVADA**

APPLICATIONS IN INTERNET TIME, LLC,

Plaintiff,

v.

SALESFORCE.COM, INC.,

Defendant.

Civil Action No.: 3:13-CV-00628-RCJ-VPC

**PLAINTIFF APPLICATIONS IN  
INTERNET TIME, LLC'S REPLY CLAIM  
CONSTRUCTION BRIEF**

RPX Exhibit 1160  
RPX v. AIT  
IPR2015-01752

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.

1 **II. ARGUMENT**

2 **A. “automatically detect[ing]”**

3

Claim Term / Phrase	AIT Proposed Construction	Salesforce Proposed Construction
<p>4 “automatically detect[ing]” 5 (‘482 claims 1, 21) 6 (‘111 claim 13)</p>	<p>“detect[ing] without direct human intervention”</p>	<p>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”</p>

7

8

9 **1. Human Intervention**

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

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

27 Salesforce also cites to a portion of the specification stating that “the invention provides  
28 [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  
28

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

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.