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11   **UNITED STATES DISTRICT COURT**

12   **NORTHERN DISTRICT OF CALIFORNIA**

13   **SAN JOSE DIVISION**

14 MAX SOUND CORPORATION,   Case No. 5:14-cv-04412-EJD

15   Plaintiff,   **DEFENDANTS GOOGLE INC.,
                                         YOUTUBE, LLC, AND ON2**
16   v.   **TECHNOLOGIES, INC.'S
                                         PRELIMINARY CLAIM**
17 GOOGLE INC., YOUTUBE, LLC, ON2   **CONSTRUCTIONS AND**
   TECHNOLOGIES, INC., and VEDANTI   **IDENTIFICATION OF EVIDENCE**
18 SYSTEMS LIMITED,   **PURSUANT TO PATENT L.R. 4-2**

19   Defendants.

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1   Pursuant to Patent Local Rule 4-2 and the Court's Case Management Order, Dkt. No. 79,

2 Defendants Google Inc.; YouTube, LLC; and On2 Technologies, Inc. ("Defendants") hereby

3 provide to Plaintiff Max Sound Corporation ("Plaintiff") and Patent Owner Vedanti Systems

4 Limited ("Patent Owner") their Preliminary Claim Constructions and Identification of Evidence

5 for asserted independent claims 1, 7, and 10 and dependent claims 6, 9, 12, and 13 ("asserted

6 claims") of U.S. Patent No. 7,974,339 (the "'339 patent" or "asserted patent").

7   Defendants' investigation and discovery are ongoing, and Defendants, therefore, reserve

8 the right to amend and/or supplement this list and the constructions contained herein. Defendants

9 further reserve the right to supplement this disclosure in light of the positions that Plaintiff and/or

10 Patent Owner takes in this litigation. Such positions may require the Court to construe other claim

11 terms in addition to the ones listed in this disclosure.

12   The following terms, phrases, or clauses are identified for construction wherever they

13 appear in any claim or element, including all dependent claims or claims where multiple terms

14 appear in combination. To the extent that the asserted claims contain identical claim terms,

15 phrases, or clauses, Defendants' proposed constructions below shall apply equally to each of the

16 asserted claims. Defendants contend that all terms not identified should be given the ordinary and

17 customary meaning that the term would have to a person of ordinary skill in the art in question

18 reading the asserted patent at the time of the invention, i.e., as of the effective filing date of the

19 patent application. In addition, Defendants' proposal of a construction for any claim terms,

20 phrases, or clauses herein does not mean that the claim term or claim element is valid or

21 construable under 35 U.S.C. § 112, and Defendants reserve the right to so assert and make no

22 admission or contention herein.

23   Defendants may rely upon extrinsic evidence in the form of sworn testimony from Dr. Iain

24 Richardson. Dr. Richardson may testify as to the understanding of individuals of ordinary skill in

25 the art at the relevant time period for the asserted patent. Specifically, Dr. Richardson may

26 provide testimony regarding background technology or to demonstrate that Defendants'

27 constructions of the proposed claim terms and phrases are consistent with the meaning of such

28 terms and phrases in the relevant art during the relevant time period for the asserted patent. Such

testimony will address both the general understanding of the relevant terms and phrases in the field of the art as well as the understanding of such terms and phrases in the context of the specification and claims of the asserted patent. Defendants do not plan to bring Dr. Richardson to the claim construction hearing unless the Court requests his presence in advance. Defendants further reserve the right to introduce expert testimony to rebut Plaintiff and/or Patent Owner's claim construction positions, and any expert testimony introduced by Plaintiff and/or Patent Owner.

Defendants may also rely on the extrinsic evidence cited below, including the following:

- The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) [GOOG-MXSND-00003247 – GOOG-MXSND-00003253];

- IBM Dictionary of Computing (1994) [GOOG-MXSND-00003228 – GOOG-MXSND-00003232];

- Merriam-Webster's Collegiate Dictionary (10th ed. 2001) [GOOG-MXSND-00003233 – GOOG-MXSND-00003238];

- Microsoft Press Computer Dictionary (3d ed. 1997) [GOOG-MXSND-00003239 – GOOG-MXSND-00003242]; and

- Newton's Telecom Dictionary (16th ed. 2000) [GOOG-MXSND-00003243 – GOOG-MXSND-00003246].

Pursuant to Patent Local Rule 4-2, Defendants provide the following preliminary proposed constructions and identification of evidence in support of their constructions:

Claim Term, Phrase, or Clause	Defendants' Proposed Construction and Support
"pixel data" (claims 1, 6, 7, 9, 10, 12, 13)	"color or brightness values of a pixel"
	'339 patent at Abstract, 1:46-52, 3:13-34, 3:51-56, 5:21-36, 6:5-9, 6:25-27, 7:10-17, 7:63-8:5, 8:27-31, 9:12-23, 9:28-41, 9:44-54, 9:57, 10:19-20, 10:24-39, 10:43-54, Fig. 5, Fig. 9, Fig. 10, cl. 1, cl. 4, cl. 5, cl. 6, cl. 7, cl. 8, cl. 9, cl. 10, cl. 11, cl. 12, cl. 13.
	Newton's Telecom Dictionary at 655 [GOOG-MXSND-00003246]; The Authoritative Dictionary of IEEE Standards Terms at 830-31 [GOOG-MXSND-00003250 – GOOG-MXSND-00003251].
	Sworn testimony of Dr. Richardson.

"pixel selection data" (claim 7) / "selection pixel data" (claims 7, 10)	"pixel data transmitted without any further processing for each region in a frame"
	'339 patent at Abstract, 1:46-52, 3:13-34, 4:11-31, 6:25-7:9, 7:55-62, 8:44-48, 9:5-41, Fig. 7, Fig. 9, Fig. 10, cl. 7, cl. 10; U.S. Patent & Trademark Office Prosecution Proceeding No. 10/892,690 for the '339 patent Amendment, dated Jan. 24, 2011 at 17-18; Supplemental Amendment, dated Jan. 24, 2011, at 17-18; Amendment, dated Dec. 27, 2010, at 18; Amendment Application and Response to April 14, 2010, July 12, 2010 Format Correction, and August 31, 2010 Office Actions, dated Sep. 3, 2010, at 8; Amendment Application and Response to April 14, 2010, dated July 10, 2010, at 7; Amendment, dated July 28, 2009, at 6, 13; Artifact 10892690UA Presentation at 2.
	Merriam-Webster's Collegiate Dictionary at 1056 [GOOG-MXSND-00003236]; The Authoritative Dictionary of IEEE Standards and Terms at 1017 [GOOG-MXSND-00003253].
	Sworn testimony of Dr. Richardson.
"pixel variation data" (claim 13)	"difference in pixel data between adjacent pixels"
	'339 patent at 3:53-56, 5:14-66, 6:19-21, 8:24-43, 8:49-9:4, cl. 2, cl. 13; Amendment, dated Jan. 24, 2011, at 12-13; U.S. Patent & Trademark Office Prosecution Proceeding No. 10/892,690 for the '339 patent Amendment, dated Jan. 24, 2011, at 12-13; Supplemental Amendment, dated Jan. 24, 2011, at 12-13; Amendment, dated Dec. 27, 2010, at 11-13; Supplemental Amendment and Response to Notice of Non-Compliant Amendment January 13, 2010, dated July 21, 2010, at 11-12; Supplemental Amendment and Response to Notice of Non-Compliant Amendment January 13, 2010, dated Feb. 8, 2010, at 11-13; Supplemental Amendment and Response, dated Dec. 28, 2009, at 11-13; Amendment, dated July 28, 2009, at 9-12.
	Merriam-Webster's Collegiate Dictionary at 1302 [GOOG-MXSND-00003238].
	Sworn testimony of Dr. Richardson.
"frame data" (claims 1, 7)	"image comprised of pixel data"
	'339 patent at Abstract, 1:42-46, 3:15-34, 3:43-4:10, 4:32-37, 4:44-53, 5:55-58, 5:64-66, 6:17-21, 7:18-27, 8:6-15, 8:20-23, 9:42-67, 10:1-18, Fig. 8, cl. 1, cl. 7; U.S. Patent & Trademark Office Prosecution Proceeding No. 10/892,690 for the '339 patent Artifact 10892690UA Presentation at 2.
	Sworn testimony of Dr. Richardson.

"region" (claims 1, 6, 10, 12, 13)	"division of a frame"
	'339 patent at Abstract, 1:42-46, 3:29-34, 3:51-4:31, 5:54-6:3, 6:19-24, 6:34-35, 7:5-9, 7:18-42, 7:46-54, 8:24-26, 8:44-55, 8:57-58, 8:63-67, 9:5-11, 9:35-41, 9:50-54, 10:14-18, cl. 1, cl. 4, cl. 5, cl. 6, cl. 10, cl. 11, cl. 12, cl. 13; U.S. Patent & Trademark Office Prosecution Proceeding No. 10/892,690 for the '339 patent Amendment dated Jan. 24, 2011, at 13; Amendment, dated Dec. 27, 2010, at 13; Supplemental Amendment and Response to Notice of Non-Compliant Amendment January 13, 2010, dated Feb. 8, 2010, at 13; Supplemental Amendment and Response, dated Dec. 28, 2009, at 13; Amendment, dated July 28, 2009, at 9-10.
	Microsoft Press Computer Dictionary at 402 [GOOG-MXSND-00003242]; The Authoritative Dictionary of IEEE Standards and Terms at 948 [GOOG-MXSND-00003252].
	Sworn testimony of Dr. Richardson.
"matrix" (claims 1, 7, 9, 12)	"region with square or rectangular dimensions"
	'339 patent at 1:42-46, 3:51-4:43, 5:54-6:16, 6:19-24, 6:34-35, 7:5-9, 7:18-42, 7:46-54, 8:24-26, 8:44-48, 8:57-9:4, 9:7-11, 9:35-37, 9:50-54, 10:14-54, Fig. 5, Fig. 6, Fig. 9, Fig. 10, cl. 1, cl.2, cl. 3, cl. 7, cl. 8, cl. 9, cl. 10, cl. 12; U.S. Patent & Trademark Office Prosecution Proceeding No. 10/892,690 for the '339 patent Amendment dated Jan. 24, 2011, at 13; Amendment, dated Dec. 27, 2010, at 13; Supplemental Amendment and Response to Notice of Non-Compliant Amendment January 13, 2010, dated Feb. 8, 2010, at 13; Supplemental Amendment and Response, dated Dec. 28, 2009, at 13; Amendment, dated July 28, 2009, at 9-10.
	IBM Dictionary of Computing at 423 [GOOG-MXSND-00003232].
	Sworn testimony of Dr. Richardson.
"region data" (claims 1, 10, 12, 13)	"dimensions and sequences of one or more regions"
	'339 patent at Abstract, 1:42-46, 5:58-64, 7:18-27, 8:24-26, 8:44-55, 8:57-58, 9:7-11, 9:50-54, 10:14-18, cl. 1, cl. 10, cl. 12, cl. 13.
	Sworn testimony of Dr. Richardson.
"matrix definition data" (claim 1) / "matrix data" (claims 7, 9, 12)	"uniform matrix dimensions or non-uniform matrix dimensions and sequences"
	'339 patent at Abstract, 1:42-46, 3:51-4:10, 4:32-43, 5:54-6:16, 7:10-27, 7:46-54, 7:63-8:5, 8:24-9:4, 9:7-11, 9:44-54, 9:57, 10:14-23, 10:29-54, Fig. 5, Fig. 6, Fig. 9, Fig. 10, cl. 1, cl. 7, cl. 9, cl. 12.
	Sworn testimony of Dr. Richardson.

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