



respective proposed constructions for the disputed terms from the asserted claims<sup>1</sup> of U.S. Patent No. 8,539,047 (the "'047 Patent"). The parties have met and conferred in an attempt to narrow their claim construction disputes, but have been unable to reach agreement as to the 10 terms set forth in Appendix A. The intrinsic and extrinsic evidence identified in Appendix A reflects the parties' current understanding; the parties reserve the right to rely upon additional intrinsic and extrinsic evidence as needed. The parties will continue to meet and confer in an effort to further narrow the remaining claim construction disputes and reserve the right to propose one or more agreed-upon constructions or to decline to construe one or more of the currently disputed terms.

Terms 1-4 in Appendix A have been proposed by IOENGINE for construction in both cases. The parties have agreed that terms 1-4 will be briefed and argued by Imation on behalf of both Imation and IMC. IMC agrees that any construction of terms 1-4 shall be binding upon IMC.

Terms 5-7 in Appendix A have been proposed for construction by Imation and IMC. Terms 5-7 in Appendix A will be briefed and argued by Imation on behalf of both Imation and IMC. IMC agrees that any construction of terms 5-7 shall be binding upon IMC. Terms 8-10 in Appendix A have been proposed for construction by IMC and will be briefed and argued by IMC only. IOENGINE believes that any terms that are construed should be construed for all parties regardless of which party proposed the term for construction, and that any construction should be applied in both cases. Imation believes that any construction of terms 8-10 is not part of the litigation between IOENGINE and Imation, and any such construction should apply only to IMC and IOENGINE.

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<sup>1</sup> IOENGINE has asserted Claims 1, 2 and 6-31 of the '047 Patent against Imation and against IMC.

**AGREED TO BY THE PARTIES:**

Dated: November 4, 2015

Respectfully submitted,

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**Plaintiff’s Terms for Construction:<sup>2</sup>**

<b><u>No.</u></b>	<b><u>CLAIM TERM AND AFFECTED CLAIMS</u></b>	<b><u>PLAINTIFF’S PROPOSED CONSTRUCTION(S)</u></b>	<b><u>DEFENDANTS’ CONSTRUCTION(S)</u></b>
1	<p><b><u>Proposed by Plaintiff:</u></b></p> <p>“executable program code stored thereon”</p> <p>’047 Patent, independent claims 1, 24, 26, 27 and 30 (and dependent claims 25 and 31).</p>	<p><b><u>Proposed Construction:</u></b></p> <p>“a sequence of instructions that can be run from the portable device memory on which it is stored”</p> <p><b><u>Intrinsic Evidence:</u></b></p> <p><b>’047 Patent:</b></p> <p>’047 Patent at 2:55-66, 5:1-4, 5:20-31, 6:5-57, 28:46-50, and Fig. 3.</p> <p><b>’047 Prosecution History:</b></p> <p>Prosecution History of ’047 Patent, January 25, 2013, Response to Office Action, at 10.</p> <p><b><u>Extrinsic Evidence:</u></b></p> <p><i>IEEE 100 The Authoritative Dictionary of IEEE Standards Terms</i>, Standards</p>	<p><b><u>Proposed Construction:</u></b></p> <p>No construction needed. “executable” and “stored” are well understood. To the extent a construction is needed, “program code that can be run from a location located thereon”</p> <p><b><u>Extrinsic Evidence:</u></b></p> <p><i>Microsoft Computer Dictionary</i> (ed. 1999): “executable program code pertaining to, or being a program file that can be run...”; “executable program file that can be run from file0.bat, file1.exe, or file2.exe”</p> <p><i>Microsoft Computer Dictionary</i> (ed. 1999): “storage location the position at which a program can be found—either an absolute location or a uniquely identified location”</p>

<sup>2</sup> IOENGINE has proposed term nos. 1-4 for construction in both cases. The parties have agreed that terms proposed by IOENGINE will be briefed and argued by Imation on behalf of both Imation and IMC. IMC agrees that any construction of terms proposed by Imation shall be binding upon IMC.

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