

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**WEBROOT, INC. and
OPEN TEXT, INC.,**

Plaintiffs,

v.

AO KASPERSKY LAB,

TREND MICRO, INC.,

SOPHOS LTD.,

**CROWDSTRIKE, INC. AND
CROWDSTRIKE HOLDINGS, INC.,**

FORCEPOINT, LLC,

Defendants.

**W-22-CV-00243-ADA-DTG
(LEAD CASE)**

W-22-CV-00239-ADA-DTG

W-22-CV-00240-ADA-DTG

W-22-CV-00241-ADA-DTG

W-22-CV-00342-ADA-DTG

**REPLY CLAIM CONSTRUCTION BRIEF FROM:
AO KASPERSKY LAB (“KASPERSKY”),
TREND MICRO, INC., (“TREND MICRO”),
SOPHOS LTD. (“SOPHOS”),
CROWDSTRIKE, INC. AND CROWDSTRIKE HOLDINGS, INC. (“CROWDSTRIKE”),
AND FORCEPOINT, LLC (“FORCEPOINT”)**

Col. 21:12-18. OTI avoids addressing this argument. All disclosed embodiments include at least event, contextual state and global perspective information. *See, e.g., id.*, Col. 17:61-63 (all three); Col. 9:50-58 (all three plus event priority); 22:55-60; Fig. 12 (all three plus event priority and time stamp). Thus, the patents support Kaspersky’s proposed construction.

Finally, OTI argues that “line” conflicts with the Fig. 12 embodiment. Not so. The figure and specification disclose a line of data containing information. While the two patents use the term “data structure,” that label alone does not alter the fact that a line of data is shown. If the Court prefers “a data structure” over “a line of data,” however, Kaspersky does not object.

D. Order of Steps: “gathering an event . . . ; generating contextual state information for the event . . . ; obtaining a global perspective for the event based on the contextual state information . . . ;” (’045 patent, claims 1, 8, and 16; ’224 patent, claims 1, 10, and 17)

For the reasons set forth in Defendants’ Brief, all of the asserted claims of the ’224 and ’045 patents require that the steps of (a) gathering an event, (b) generating a contextual state, and (c) obtaining a global perspective be performed in that precise order. Br. 35-37.

OTI makes three arguments to try to override the plain language in the claims and the specification. First, OTI argues that claim language that refers back to previous steps is not dispositive as to whether they must be performed in order. The case law relied upon by OTI, however, is readily distinguishable. In *Microsoft Corp. v. Uniloc 2017 LLC*, requiring an order would have made other steps inconsistent. 2022 WL 11531235, *3 (Fed. Cir. Oct 20, 2022). No such inconsistency threatens here. Performing the gathering, generating, and obtaining steps in order is fully consistent with the rest of the steps, and OTI does not contend otherwise. OTI’s remaining cases are likewise inapposite. *See Interactive Gift Exp., Inc. v. Compuserve Inc.*, 256 F. 3d 1323, 1343 (Fed. Cir. 2001) (finding that the order of steps would have read out the preferred embodiment); *Respironics, Inc. v. Invacare Corp.*, 303 F. App’x 865 (Fed. Cir. 2008) (construing that the steps *must be performed in order*).

Second, OTI argues there are embodiments where the steps may be performed in a different order, relying on four isolated parts of the specification. Opp. 39-40. Each of these fails to alter the plain language of the claims. The disclosure in column 12 simply recites what happens if the system receives an event that ***duplicates*** a previously-observed event. '224 patent, 12:13-16. It has no bearing on the order for the gathering, generating, and obtaining steps. It simply states that, after those steps are done, additional steps may be performed for duplicate events.

The column 9 disclosure is likewise beside the point. *Id.*, 9:3-25. That passage simply explains that, in some unclaimed embodiments, the contextual state information may be *obtained*, instead of *generated*. The claims, however, require “***generating*** contextual state information” by “correlating the event to an originating object.” *Id.*, cl. 1. Column 9 also describes the ability to cache a global perspective, but that is likewise irrelevant because it still must be retrieved from the cache “[a]fter the contextual analysis completes,” i.e., in the recited order. *Id.*, 9:12.

The disclosure from column 5 is likewise not relevant to the claims. *Id.*, 5:42-50. That passage is directed to another unclaimed embodiment that dissects an event line to extract already generated information. The claims, on the other hand, are directed to “***generating*** an event line” based upon the gathering, generating and obtaining steps, in that order.

The final disclosure from column 24 is just a generic, legally insufficient recitation that steps may be performed in a different order and does not alter the scope of the claim. *See D Three Enterprises, LLC v. SunModo Corp.*, 890 F.3d 1042, 1050–51 (Fed. Cir. 2018) (“This boilerplate language at the end of the 2009 Application’s specification is not sufficient to show adequate disclosure of the actual combinations and attachments used in the Washerless Claims.”); *IP Innovation, L.L.C. v. Ecollege.com*, 156 F. App’x 317, 321–22 (Fed. Cir. 2005) (“The only other reference to ‘embodiments’ in the ’404 patent is common boilerplate language that does not

specifically address the inventive features in any detail. . . . Thus, the '404 patent does not disclose multiple embodiments having different implementations of the embedded limitation . . .”).

Finally, OTI insists the language of each claim slightly differs and the order of steps should not apply to the system claims. Opp. 39. As previously explained, however, courts have held that order of steps also applies to system and apparatus claims. Br. 36-37.

E. Means-plus-function: “a sensor agent . . .” (’224 patent, claims 10, 14, 15, and 17)

OTI’s argument that the words “agent” and “sensor” individually connote structure is misplaced, as those words are not the claim term at issue. *Advanced Ground Info. Sys., Inc. v. Life360, Inc.*, 830 F.3d 1341, 1348 (Fed. Cir. 2016) (whether “symbol” and “generator” were terms of art was irrelevant where claim term, “symbol generator” was just an abstraction describing function being performed). The term that *is* claimed, “sensor agent,” is a generic black box used to describe a wide variety of structures with varying functions, and does not connote a definite structure. Ex. V ¶¶ 56, 67. OTI offers no evidence apart from conclusory and unsupported expert testimony that “sensor agent” was a known term. And OTI’s expert cast doubt on that statement when he admitted that if a sensor agent structure operable to perform the claimed functions *were* known, the claim would be invalid. Ex. EE at 119:2-11. Moreover, even OTI’s formulation of a “sensor agent” as an agent that collects events does not connote sufficient structure for performing the claimed functions, which require not just gathering events, but also generating a contextual state, obtaining a global perspective, and generating and transmitting an event line. *See Williamson*, 792 F.3d at 1349, 51. Ex. V ¶ 55, pp. 19-21; Ex. FF ¶¶ 27-31.

That the sensor agent is a set of instructions stored on “the data storage that is executable by the processor” says nothing more than the fact that a “sensor agent” is some black box software and imparts no structure to the term. *Williamson*, 792 F.3d at 1351; Ex. V ¶¶ 57, 62; Ex. FF ¶¶ 32-35. That the “sensor agent” utilizes a generic “communication interface” to perform just one of its

five functions similarly does not inform its structure. *Id.*

The claims do not recite how the sensor agent operates. The claims only recite objectives for what it should accomplish (e.g., gather / obtain / generate something having certain features). For example, “defining an action of a first object acting on a target” describes features of the claimed “event” and is part of the objective of “gather an event.” *Id.* Other sensor agent objectives are claimed, but the operations for achieving those objectives are not. *Id.* Moreover, OTI only identifies alleged operations for some of the claimed functions (e.g., generating contextual state and transmitting). Opp. at 42-43. Thus, the term does not recite a sufficiently definite structure or sufficient structure for performing the claimed functions. Ex. V ¶¶ 54-67; Ex. FF ¶¶ 27-36

As one example, there is no algorithm for “obtain[ing] / [determining] a global perspective ... wherein the global perspective relates to one or more other events related to the event across a network.” Dr. Medvidovic’s argument that “information in the ‘global perspective,’ ... can be derived from **other events related to the event** across network” (Ex. 4 ¶ 108) is misplaced because it explains that this information is derived from the “**same event**” (*id.* ¶ 86), and the specification does not disclose an algorithm for deriving such information from the same event or “other events related to the event across a network.” Ex. V ¶¶ 70-73; Ex. FF ¶¶ 39-45. The specification, including the figures identified by OTI, similarly does not disclose the necessary algorithms for other aspects of this claimed function or other claimed functions. Ex. V ¶¶ 74-87; Ex. FF ¶¶ 37-68.

IV. ‘591 PATENT

A. “a component for evaluating the at least one monitored function in the memory space” (‘591 patent, claims 1, 9, and 17)

The term “component” is a nonce word, referring to “portions of a computing device or software.” Ex. A-2, ¶ 24; *Alarm.com, Inc. v. SecureNet Techs, LLC*, No. 15-80-RGA, 2019 WL

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was served or delivered electronically via U.S. District Court [LIVE]- Document Filing System, to all counsel of record, on this the 6th day of December, 2022.

/s/ J. Stephen Ravel
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