

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

WEBROOT, INC., OPEN TEXT INC.,
Plaintiffs,

-v-

AO KASPERSKY LAB,
Defendant.

6:22-cv-00243-ADA-DTG

CLAIM CONSTRUCTION ORDER

Before the Court are the Parties' claim construction briefs: Counterclaim Defendants Webroot, Inc. and Open Text Inc.'s Response Brief Opening Claim Construction Brief (ECF No. 85), Counterclaim Plaintiff AO Kaspersky Lab (ECF No. 96), Defendants' Reply Claim Construction Brief (ECF No. 109), Plaintiff Sur-Reply (ECF No. 147), and the Joint Claim Construction Statement (ECF No. 183). On March 13, 2023, the Court provided the parties with its Preliminary Claim Constructions, and on March 14, 2023, the Court held a *Markman* hearing.

The Court issues this Order to memorialize the Court's final claim construction rulings for the parties, and to inform the parties that the Court plans to issue a more-detailed Order explaining its analysis in due course. The deadline to file any objections to the undersigned's claim construction rulings (pursuant to Federal Rules of Civil Procedure 59 and 72) do not need to be filed until 14 days after that more fulsome Order is entered upon the docket.

SIGNED this 16th day of March, 2023.



DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE

Term	Plaintiff's Proposed Construction	Defendants' Proposed Construction	Court's Preliminary Construction
#1: "security rating" U.S. Patent 7,530,106, Claims 1, 8, 9, 18, 19 Proposed by Defendants	"a classification of threat that varies from safe to dangerous"	"combination of a static rating and a dynamic rating that varies from 'safe' to 'dangerous' and is calculated from 0 to 100 percent"	Plain-and-ordinary meaning wherein the plain-and-ordinary meaning is a classification of threat that varies from safe to dangerous."
#2: "the initial security rating" / "an initial security rating" U.S. Patents 7,530,106, Claims 1, 19 Proposed by Defendant	Plain and ordinary meaning: the initial classification of threat that varies from safe to dangerous	Indefinite	Not indefinite. Preamble is limiting and provides antecedent basis for "the initial security rating"
#3: "updating the security rating of the process" / "updates the security rating of the process" U.S. Patent 7,530,106, Claims 1, 19 Proposed by Defendants	Plain and ordinary meaning	Indefinite	Plain-and-ordinary meaning

Term	Plaintiff's Proposed Construction	Defendants' Proposed Construction	Court's Preliminary Construction
#4: "known file" / "unknown file" U.S. Patent 7,725,941, Claim 1 Proposed by Defendants	Plain and ordinary meaning	"A file that has been determined to have been encountered before" / "A file that has been determined to not have been encountered before"	Plain-and-ordinary meaning
#5: "signature malware check" / "signature detection" U.S. Patent 7,725,941, Claim 1 Proposed by Defendants	Plain and ordinary meaning, which is "scanning a file for a malware signature"	Indefinite	Not indefinite. Plain-and-ordinary meaning wherein the plain-and-ordinary meaning "scanning a file for a malware signature"

Term	Plaintiff's Proposed Construction	Defendants' Proposed Construction	Court's Preliminary Construction
#6: "merging events stored in the object contexts of related processes or threads into a common context" / "merge events stored in the object contexts of related processes and threads into a common context" U.S. Patent 8,042,186, Claims 1, 8, 15 Proposed by Defendants	Plain and ordinary meaning	"merging two or more separate event logs into a single log" / "merge two or more separate event logs into a single log"	Plain-and-ordinary meaning
#7: "configured to store" / "configured to . . . store" U.S. Patent 8,042,186, Claim 8 Proposed by Defendants	Plain and ordinary meaning	"configured to copy into storage"	Plain-and-ordinary meaning
#8: "process virtual machine" U.S. Patent 8,713,631, Claims 1-4, 12-15, 22 Proposed by Defendants	Plain and ordinary meaning, which is "application virtual machine"	"application virtual machine, distinct from a hardware virtual machine and an operating system virtual machine, that includes the likes of Java Virtual Machine (JVM), or the Common Language Runtime (CLR)"	Plain-and-ordinary meaning, wherein the plain-and-ordinary meaning is "application virtual machine"

Term	Plaintiff's Proposed Construction	Defendants' Proposed Construction	Court's Preliminary Construction
#9: "potential to violate a predefined security policy" U.S. Patent 8,713,631, Claims 1, 12 Proposed by Defendants	Plain and ordinary meaning	Indefinite	Not indefinite. Plain-and-ordinary meaning.