

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

DATANET LLC,

Plaintiff,

v.

DROPBOX, INC.,

Defendant.

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Civil Action No. 6:22-cv-01142-OLG

Jury Trial Demanded

DEFENDANT DROPBOX, INC.'S OPENING CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND AND TECHNOLOGY OVERVIEW	1
A. U.S. Patent No. 10,585,850.....	1
B. U.S. Patent Nos. 8,473,478 and 9,218,348	2
III. DISPUTED TERMS FOR CONSTRUCTION	2
A. U.S. Patent No. 10,585,850.....	2
1. “responsive to a selection to not restoring the previous version” (claims 6 & 14)	2
2. “storing the selected previous version ... as the current version on the local storage location” / “storing the second selected previous version ... as the current version on the local storage location” (claims 1, 6, 10, 14, 18)	6
3. “substantially imperceptible impact ... from a user’s point of view” (claims 9 and 17)	9
4. “a selection to preview a selected previous version of the file” (claims 1, 10, 18)	12
5. “retrieving the restorable representation” (claims 1, 6, 10, 14, 18)	15
B. U.S. Patent Nos. 8,473,478 and 9,218,348	17
1. “temporary first storage location” (’478 Patent claims 1, 8-11) / “first temporary storage location” (’478 Patent claims 1, 8-11) / “temporary storage location” (’478 Patent claims 1, 8-11; ’348 Patent claims 1, 8, 12-15, 23, 24)	17
2. “intermediate storage location” (’478 Patent claim 1; ’348 Patent claims 1, 8, 12-15, 27, 28, 30)	21
3. “final destination” (’478 Patent claim 1; ’348 Patent claim 1)	25
4. “event” (’478 Patent claims 1, 8-11; ’348 Patent claims 1, 8, 12-15, 26, 27)	27
5. “timer” (’478 Patent claims 8 & 10; ’348 Patent claim 26)	29
IV. CONCLUSION.....	30

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>ACTV, INC. v. Walt Disney Co.</i> , 346 F.3d 1082 (Fed. Cir. 2003).....	18
<i>Altiris, Inc. v. Symantec Corp.</i> , 318 F.3d 1363 (Fed. Cir. 2003).....	19, 24
<i>Amgen Inc. v. Hospira, Inc.</i> , No. 1:15-CV-00839-RGA, 2016 WL 7013483 (D. Del. Nov. 30, 2016)	4
<i>Amgen Inc. v. Sandoz Inc.</i> , 923 F.3d 1023 (Fed. Cir. 2019).....	13
<i>Bd. of Regents of the Univ. of Tex. Sys. v. BENQ Am. Corp.</i> , 533 F.3d 1362 (Fed. Cir. 2008).....	27
<i>Bio-Rad Lab 'ys, Inc. v. Int'l Trade Comm'n</i> , 998 F.3d 1320 (Fed. Cir. 2021).....	5
<i>Cat Tech LLC v. TubeMaster, Inc.</i> , 528 F.3d 871 (Fed. Cir. 2008).....	27
<i>EmeraChem Holdings, LLC v. Volkswagen Grp. of Am., Inc.</i> , 714 F. App'x 995 (Fed. Cir. 2017)	29
<i>Haemonetics Corp. v. Baxter Healthcare Corp.</i> , 607 F.3d 776 (Fed. Cir. 2010).....	8
<i>Hill-Rom Servs., Inc. v. Stryker Corp.</i> , 755 F.3d 1367 (Fed. Cir. 2014).....	13
<i>Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.</i> , 381 F.3d 1111 (Fed. Cir. 2004).....	13
<i>Intell. Ventures I LLC v. T-Mobile USA, Inc.</i> , 902 F.3d 1372 (Fed. Cir. 2018).....	9
<i>Intell. Ventures II, LLC v. AT & T Corp.</i> , No. 1:13-CV-00116, 2015 WL 4138590 (W.D. Tex. July 8, 2015).....	19, 25
<i>Interval Licensing LLC v. AOL, Inc.</i> , 766 F.3d 1364 (Fed. Cir. 2014).....	9, 10, 11

<i>Iridescent Networks, Inc. v. AT&T Mobility, LLC</i> , 933 F.3d 1345 (Fed. Cir. 2019).....	14, 20
<i>Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n</i> , 22 F.4th 1369 (Fed. Cir. 2022)	18
<i>Littelfuse, Inc. v. Mersen USA EP Corp.</i> , 29 F.4th 1376 (Fed. Cir. 2022)	26
<i>M-I LLC v. FPUSA, LLC</i> , No. 5:15-CV-00406-DAE, 2019 WL 13192214 (W.D. Tex. Aug. 13, 2019)	15, 16
<i>Merck & Co. v. Teva Pharms. USA, Inc.</i> , 395 F.3d 1364 (Fed. Cir. 2005).....	18, 21, 23
<i>Nautilus, Inc. v. Biosig Instruments, Inc.</i> , 572 U.S. 898 (2014).....	3, 9
<i>O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.</i> , 521 F.3d 1351 (Fed. Cir. 2008).....	29
<i>Pfizer, Inc. v. Ranbaxy Labs. Ltd.</i> , 457 F.3d 1284 (Fed. Cir. 2006).....	5
<i>Planet Bingo, LLC v. VKGS, LLC</i> , No. 1:12-CV-00219, 2013 WL 1729574 (W.D. Mich. Apr. 22, 2013)	3
<i>Schumer v. Lab’y Comput. Sys., Inc.</i> , 308 F.3d 1304 (Fed. Cir. 2002).....	23
<i>SCVNGR, Inc. v. DailyGobble, Inc.</i> , 6:15-CV-00493, 2017 WL 4270200 (E.D. Tex. Sept. 26, 2017).....	19, 24
<i>Seachange Int’l Inc. v. C-COR, Inc.</i> , 413 F.3d 1361 (Fed. Cir. 2005).....	14, 20
<i>SimpleAir, Inc. v. Sony Ericsson Mobile Commc’ns AB</i> , 820 F.3d 419 (Fed. Cir. 2016).....	27
<i>SIPCO, LLC v. Emerson Elec. Co.</i> , 794 F. App’x 946 (Fed. Cir. 2019)	26
<i>Southwall Techs., Inc. v. Cardinal IG Co.</i> , 54 F.3d 1570 (Fed. Cir. 1995).....	15
<i>Thorner v. Sony Comput. Entm’t Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	7

<i>Zeta Glob. Corp. v. Maropost Mktg. Cloud, Inc.</i> , No. 1:20-CV-03951-LGS, 2021 WL 2823563 (S.D.N.Y. July 7, 2021)	3
<i>Zircon Corp. v. Stanley Black & Decker, Inc.</i> , 452 F. App'x 966 (Fed. Cir. 2011)	4

I. INTRODUCTION

Plaintiff Datanet LLC (“Datanet”) asserted three patents against Dropbox, Inc. (“Dropbox”). The Patents-in-Suit—U.S. Patent Nos. 10,585,850 (the “’850 Patent”), 9,218,348 (the “’348 Patent”), U.S. Patent No. 8,473,478 (the “’478 Patent”)—are all part of the same patent family, share the same specification, and titled “Automatic Real-Time File Management Method and Apparatus” and.

The Parties have agreed to the construction of eight terms, which are identified in Appendix A. In accordance with the Order Governing Proceedings (Dkt. No. 27 at 9), and the parties’ confirmed, mutual understanding, Dropbox has identified ten disputed terms for construction in this opening brief: five for the ’850 Patent and five for the ’478 and ’348 Patents (collectively).

Dropbox’s proposed constructions should be adopted and Datanet’s rejected.

II. BACKGROUND AND TECHNOLOGY OVERVIEW

A. U.S. Patent No. 10,585,850

The ’850 Patent generally relates to a “method of restoring a file to a previous version of the file, a current version of the file being available at a local storage location.” Ex. A, ’850 Patent at claim 1. The claimed method has three primary steps: (A) presenting information related to one or more previous versions of a file, where the previous version(s) are in a remote storage location and the current version is in a local storage location, (B) previewing the selected previous version, and (C) restoring the selected previous version such that the previous version replaces the current version on the local storage location.

This claimed method is neither described in nor contemplated by the specification. Instead, this new matter was introduced in a preliminary amendment over 15 years *after* the filing of the application to which the ’850 Patent purportedly claims priority. The vast majority of the concepts, terms, and phrases that the patentee attempted to shoe-horn into the claims are not present,

referenced, or otherwise discussed in the specification. As one, nonlimiting example, the specification never once references “previewing” or “restoring.”¹ As a result, the ’850 Patent’s claims are riddled with ambiguities and terms that require construction, as discussed below.

B. U.S. Patent Nos. 8,473,478 and 9,218,348

The ’478 and ’348 Patents generally relate to a method for archiving files. *See, e.g.*, Ex. B, ’478 Patent at claim 1, Abstract; Ex. C, ’348 Patent at claim 1, Abstract.² The specification describes “computing device 5 including a file capture block 10 (or file capturer), a smart data management block 15 (or smart data manager), an input buffer 20, output buffer(s) 25, and a database 30.” Ex. B, ’478 Patent at 4:64-67. It also describes “[a] storage device 35” that “may be either internal or external to computing device 5,” and that “[t]he invention functions in conjunction with a resident program on computing device 5.” *Id.* at 4:67-5:3.

III. DISPUTED TERMS FOR CONSTRUCTION

A. U.S. Patent No. 10,585,850

1. “responsive to a selection to not restoring the previous version” (claims 6 & 14)

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
Indefinite	No need for construction; plain and ordinary meaning. Alternatively, “Responding to an input (such as, for example but not limited to, clicking on another version, or clicking on a “cancel,” or interacting with some other input/element) that the user does not wish to restore the earlier version it selected for preview.”

¹ Dropbox reserves the right to challenge the validity of any asserted claim based on written description and/or enablement grounds.

² Throughout, for simplicity, the ’478 Patent is cited for citations to the generally common specification shared by the ’478 and ’348 Patents. To the extent the specifications differ in a way that affects any cited material or argument, the distinction is noted.

a. This term renders claims 6 and 14 invalid as indefinite.

Dependent claims 6 and 14 are invalid as indefinite because their requirements are incompatible with those of the independent claims from which they depend. As such, when viewed in light of the intrinsic evidence, claims 6 and 14 would not inform a POSITA about the scope of the invention with reasonable certainty. Ex. D, Weissman Decl. ¶¶ 37-42.

Known as the “definiteness” requirement, a patent must “conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as [the] invention.” 35 U.S.C. § 112 ¶ 2. For this requirement, “a patent’s claims, viewed in light of the specification and prosecution history” must “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). “A lack of definiteness renders invalid ‘the patent or any claim in suit.’” *Id.* at 902 (quoting 35 U.S.C. § 282, ¶ 2(3)).

Dependent claims—which must “specify a further limitation of the subject matter claimed” and “shall be construed to incorporate by reference all the limitations of the claim to which it refers,” 35 U.S.C. § 112(d)—are indefinite when their requirements are incompatible with the requirements of the independent claims from which they depend. *See, e.g., Zeta Glob. Corp. v. Maropost Mktg. Cloud, Inc.*, No. 1:20-CV-03951-LGS, 2021 WL 2823563, at *5 (S.D.N.Y. July 7, 2021) (finding indefiniteness based on “facially incompatible meanings” of terms that were “contradictory” and “nonsensical” where dependent claim required “a failure message (1) received by the sender when the ISP is *unable* to deliver an email to a recipient (2) *and* is created only *after* the email is delivered to the recipient ... that is, simultaneously after delivery and upon non-delivery”); *Planet Bingo, LLC v. VKGS, LLC*, No. 1:12-CV-00219, 2013 WL 1729574, at *7 (W.D. Mich. Apr. 22, 2013) (finding dependent claims indefinite where “[t]he plain language of the independent claims is incompatible with the plain language of the dependent claims”).

Here, dependent claims 6 and 14 refer to independent claims 1 and 10, respectively. As such, claims 6 and 14 require the steps recited by claims 1 and 10, respectively, and the steps that claims 6 and 14 add. *See* 35 U.S.C. § 112(d).

The steps recited by independent claims 1 and 10 include “retrieving the restorable representation of the selected previous version” where the step is “responsive to a selection **to restore the selected previous version.**” In contrast, the steps added by dependent claims 6 and 14 include “presenting a second presentable representation of the selected second previous version” that is “responsive to a selection of **not restoring the previous version.**” The result is that claims 6 and 14 require (i) claim 1 and 10’s “selection to restore the selected previous version” (and corresponding “retrieving” and “storing” processes) by virtue of its dependency on claims 1 and 10, and (ii) that the same selection **not** occur by virtue of their additional limitations.

But these requirements are incompatible with one another. Specifically, claim 6 and 14’s methods cannot be performed since they require—at the same time—that two contradictory steps be taken: (1) “a selection **to restore** the selected previous version” (claims 1 and 10) and (2) “a selection **to not restoring** the previous version” (claims 6 and 14). *Ex. D, Weissman Decl.* ¶ 41.

This incompatibility also renders the claims invalid under 35 U.S.C. § 112, ¶ 4. For a dependent claim to be valid under § 112, ¶ 4, it “must be read to claim all of the steps” of the independent claim to which it refers and “contain a further limitation thereof.” *Zircon Corp. v. Stanley Black & Decker, Inc.*, 452 F. App’x 966, 975 (Fed. Cir. 2011). A dependent claim reciting a limitation that “contradicts” or is “logically inconsistent with” the limitation of its independent claim violates § 112, ¶ 4. *Amgen Inc. v. Hospira, Inc.*, No. 1:15-CV-00839-RGA, 2016 WL 7013483, at *4 (D. Del. Nov. 30, 2016).

Here, dependent claims 6 and 14’s requirements (“a selection of **not restoring the previous**

version”) contradict the requirements of independent claims 1 and 10 (“a selection *to restore the selected previous version*”). To perform an action and not perform the same action are logically inconsistent requirements. Ex. D, Weissman Decl. ¶ 42. Thus, claims 6 and 10 are invalid as indefinite. See *Pfizer, Inc. v. Ranbaxy Labs. Ltd.*, 457 F.3d 1284, 1292 (Fed. Cir. 2006) (explaining that a “violation of § 112, ¶ 4 renders a patent invalid just as violations of other paragraphs of § 112 would”).

b. Datanet’s position is incorrect and does not save the claims.

Datanet’s proposed construction does not change the result. Datanet construes claims 6 and 14 to mean that there is “an input ... that the user *does not wish to restore* the earlier version it selected for preview.” But this is problematic for two, key reasons. **First**, it rewrites the plain language of claims 6 and 14 from requiring certain steps be performed “responsive to *a selection of not restoring the previous version*” to requiring certain steps be performed in response to “an input...that the user does not wish to restore the earlier version it selected for preview.” By doing so, Datanet effectively reads out the claim’s “selection” requirement, replacing it with a “wish.” See *Bio-Rad Lab’s, Inc. v. Int’l Trade Comm’n*, 998 F.3d 1320, 1330 (Fed. Cir. 2021) (“We cannot rewrite the claims to remove [a] narrowing limitation.”). The result, as shown below, is a completely rewritten claim.

Term	Datanet’s Proposed Construction
responsive to a selection to not restoring the previous version	<u>responsive responding to a selection an input (such as, for example but not limited to, clicking on another version, or clicking on a “cancel,” or interacting with some other input/element) to that the user does not wish to restore restoring the previous version the earlier version it selected for preview</u>

Second, Datanet’s proposed construction replaces step C of claim 1 (restoring the selected previous version) with steps B2 (not restoring the first previous version, and instead presenting a second previous version) and C2 (restoring the second previous version). But this rewriting is

impermissible. Claims 6 and 14’s dependency from claims 1 and 10 require that all limitations of claims 6 and 14 be satisfied *in addition to* the limitations of claims 1 and 10; it does not mean that dependent claims 6 and 14’s limitations be satisfied *instead of* claims 1 and 10’s.

2. **“storing the selected previous version ... as the current version on the local storage location” / “storing the second selected previous version ... as the current version on the local storage location” (claims 1, 6, 10, 14, 18)**

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
Plain and ordinary meaning.	No need for construction; plain and ordinary meaning. Alternatively, “Saving the earlier version of the file ... as the most recent version of the file / saving the second chosen earlier version of the file ... as the most recent version of the file.”

Both parties agree that the term should be construed under its plain and ordinary meaning. But Datanet’s alternative proposed construction impermissibly broadens the requirement of storing the previous version “as the current version” by rewriting it to mean “the most recent version.”

- a. **Dropbox properly maintains the term’s plain and ordinary meaning, and no further construction is required.**

Beginning with the claim language, independent claims 1, 10, and 18 of the ’850 Patent recite the step of “responsive to a selection to restore the selected previous version, retrieving the restorable representation of the selected previous version from the remote storage location and *storing the selected previous version by the computational machine as the current version on the local storage location....*” Dependent claims 6 and 14 recite the same, with the only difference being reference to “the *second* selected previous version.”

This plain language makes clear that (i) in response to “a selection to restore the selected previous version,” (ii) the restorable representation of the selected previous version is retrieved from the remote storage location, and (iii) the selected previous version is stored as the current

version by the computational machine on the local storage location.³ And Datanet appears to agree that the term should be construed under the plain and ordinary meaning. Indeed, there is no lexicography or disavowal that warrants deviating from this plain and ordinary meaning. *See Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012).

b. Datanet's alternative proposed construction improperly rewrites the claim language.

Datanet highlights a critical dispute by alternatively proposing the term be construed as “saving the earlier version of the file ... as the most recent version of the file / saving the second chosen earlier version of the file ... as the most recent version of the file.” Whereas the claims’ language confirms its plain and ordinary meaning for the reasons discussed above, Datanet’s alternative proposed construction eliminates the term “as the current version” from the claim language and replaces it with “as the most recent version.” This is improper for at least two, key reasons.

First, replacing “as the current version” with “as the most recent version,” as Datanet proposes, would impermissibly change the claim’s scope. Consider a file that has a total of five versions, with the fifth version (“v5”) being “the current version” and the second version (“v2”) being “the selected previous version” to be restored. In this scenario, the claim language makes clear that (i) in response to “a selection to restore the selected previous version” (i.e., v2), (ii) the restorable representation of the selected previous version (i.e., v2) is retrieved from the remote storage location, and (iii) the selected previous version (i.e., v2) is stored “as the current version” (i.e., v5) by the computational machine on the local storage location. This is the plain and ordinary

³ The specification makes no mention of “storing the selected previous version as the current version.” In fact, the specification says nothing about a “previous version” or “the current version.”

meaning of storing a first item (the previous version) “**as**” a second item (the current version).

But Datanet’s swap of “as the current version” for “as the most recent version” changes the scenario entirely, and flouts the claim’s plain language. For example, under Datanet’s proposed construction, the selected previous version (i.e., v2) is stored “as the most recent version” if it is stored as a completely new version (i.e., a sixth version (“v6”). This would change the entire scope of the claim and, thus, cannot be correct. Ex. D, Weissman Decl. ¶¶ 46-47.

Second, Datanet ignores the claim language. The claim recites “storing the selected previous version ... as the current version on the local storage location,” not “a current version.” The phrase “a current version” appears only in the preamble of the claims. Because the claims refer to “the current version” with the definite article “the,” its antecedent basis is “a current version” with an indefinite article “a,” and this relationship indicates that “the current version” referred to in the disputed term must be the same as the first recited “current version.” *See Haemonetics Corp. v. Baxter Healthcare Corp.*, 607 F.3d 776, 782 (Fed. Cir. 2010) (Finding “a centrifugal unit” unambiguously provided the antecedent basis for “the centrifugal unit” and reading limitations into second recited “centrifugal unit” not present in the first recited “centrifugal unit” was improper).

When a previous version of a file needs to be restored at a local storage location while a current version of the file is available on a local storage location, the ’850 Patent purports to provide a solution—i.e., using the above scenario, the selected previous version v2 is stored “as the current version” v5 on the local storage location. The result is that v5 as it existed before this method was performed is no longer stored on the local storage location.

3. “substantially imperceptible impact ... from a user’s point of view”
(claims 9 and 17)

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
Indefinite	No need for construction; plain and ordinary meaning. Alternatively, “computing device performance is not affected perceivably by the user.”

The term “substantially imperceptible impact ... from a user’s point of view” is indefinite because it fails to inform a POSITA with reasonable certainty about the scope of the invention. Ex. D, Weissman Decl. ¶¶ 48-52; *see Nautilus*, 572 U.S. at 910.

The disputed term appears in dependent claims 9 and 17 which recite “[t]he method of” independent claims 1 and 10, respectively, and add a further requirement: “the method has a *substantially imperceptible impact on system performance from a user’s point of view* by delaying one or more operations to prevent a perceptible impact on system performance from a user’s point of view.”

But the phrase “substantially imperceptible impact...from a user’s point of view” is “purely subjective” and depends “on the unpredictable vagaries of any one person’s opinion.” *Intell. Ventures I LLC v. T-Mobile USA, Inc.*, 902 F.3d 1372, 1381 (Fed. Cir. 2018). There is no objective standard to determine when there is a “substantially imperceptible impact . . . from a user’s point of view.” Instead, what constitutes a “substantially imperceptible impact on system performance” may vastly differ from user to user. For example, a second or half-second delay to one user may be “substantially imperceptible,” while to another user such a delay would be quite perceptible. Ex. D, Weissman Decl. ¶ 49.

Where, as here, the disputed term is a “purely subjective claim phrase,” courts turn “to the written description for guidance.” *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014) (internal quotations omitted). But the ’850 Patent provides little. **First**, the specification

states that “[i]t is another object of the invention to provide a file capture, preservation and management method and apparatus that has an imperceptible impact on system performance from the user’s point of view.” Ex. A, ’850 Patent at 3:18-21. But this merely recites the language from the claims and gives no guidance on what constitutes a “substantially imperceptible impact. . . from a user’s point of view.”

Second, the ’850 Patent describes step 210 of an embodiment wherein “file capture block 10 detects the instruction and captures the operating file,” *id.* at 7:9-11, and “[s]tep 210 is performed by momentarily delaying the execution of step 215 in such a manner as to have little or no perceptible impact on system performance from the users point of view,” *id.* at 7:25-28. But it does not explain (i) how the impact of any such delay is determined to be “imperceptible,” let alone “substantially imperceptible,” (ii) what factors should be considered when determining whether there is a “substantially imperceptible impact,” or (iii) how to account for variance in perceptibility from user to user.

Beyond mere user-to-user variability, there is system-to-system variability. For example, the kind of system on which the method is being practiced would likewise affect the performance of this method. One could imagine a program that is run on a first system with very low computing power and that is then run on a second system with very high computing power. The program may freeze or slow the first system but not slow the second system at all. Ex. D, Weissman Decl. ¶ 51.

The decision in *Interval Licensing*, is instructive. 766 F.3d at 1364. There, the claim recited displaying content “in an unobtrusive manner that does not distract a user.” *Id.* at 1372. The Federal Circuit determined that the term was “a term of degree,” *id.* at 1370, and “purely subjective,” *id.* at 1371. The claim language offered “no objective indication of the manner in

which content images are to be displayed to the user.” *Id.* And, despite an example in the specification, the court reasoned that “a skilled artisan is still left to wonder what other forms of display are unobtrusive and non-distracting ... thus leaving the skilled artisan to consult the ‘unpredictable vagaries of any one person’s opinion.’” *Id.* at 1373–74. Thus, the term failed to inform a POSITA about the invention’s scope with reasonable certainty, and the claims were invalid as indefinite. *Id.* at 1374.

Here, like the term in *Interval Licensing* that required displaying content “in an unobtrusive manner” so as not to “distract a user,” claims 9 and 17 require delaying one or more operations in a manner that does not have a “substantially imperceptible impact ... from a user’s point of view.” Neither the claim language nor the specification provide any objective indication of the manner in which one or more operations are delayed. Thus, a POSITA is left to wonder what delays have a “substantially imperceptible impact...from a user’s point of view,” leaving the POSITA to merely “consult the unpredictable vagaries of any one person’s opinion.” *Interval Licensing*, 766 F.3d at 1373–74 (citation and quotations omitted).

Datanet’s proposed construction does not resolve the problem. Instead, it cements the term’s indefiniteness. For example, although Datanet tries to impermissibly write out the word “substantially” from the phrase, it maintains the crux of the problem: “performance is not affected perceivably by the user.” Datanet’s construction does not provide any parameters on what system performance factors are perceived by the user, or to what degree system performance would need to be impacted to be “perceivably” affected. At bottom, the term is indefinite, and Datanet’s proposed construction—whether under the “plain and ordinary meaning” or Datanet’s alternative proposed construction—should be rejected.

4. “a selection to preview a selected previous version of the file” (claims 1, 10, 18)

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
a selection to view the content of a selected previous version of the file before restoration / viewing the content of the selected revision of said file before restoration / viewing the selected another revision of said file before restoration	No need for construction; plain and ordinary meaning. Alternatively, “Show or represent an example of the earlier version of the file / showing or representing an example of an earlier version that has been chosen”

Dropbox’s proposed construction clarifies two aspects of the term: (1) to “preview a selected previous version of the file” requires that the content be presented for viewing, and (2) the recited “selection to preview” must be made before the restoration. In contrast, Datanet’s proposed construction improperly introduces new terms, adds ambiguity, and impermissibly broadens the claim’s scope.

Preview means View the Content. Dropbox’s proposal to construe “selection to preview” as “selection to view the content” comports with the claim’s plain language. The claims require that “responsive to a selection to preview ... presenting a presentable representation ... [which] ha[s] at least information required for ***presenting at least a portion*** of the selected previous version.” From this, it is known that the “selection to preview” results in the “presenting” (e.g., viewing) of “at least a portion” (e.g., at least some content) of the selected previous version.⁴ Indeed, it is the “selection to preview” that results in “presenting a presentable representation of the selected previous version.”

In contrast, Datanet proposes equating “a selection to preview” with a selection to “show or represent an example.”⁵ But the terms “represent” and “representation” are used elsewhere in

⁴ The term “preview” or “view” does not appear anywhere in the specification in a relevant context.

⁵ Dropbox agrees that “show” is another term that may be used to describe the preview aspect of this claim. Accordingly, Dropbox would not be opposed to “show or view the content.”

the claims, and different terms in the claims (i.e., “preview” and “represent”) are presumed to have different meanings. *See Amgen Inc. v. Sandoz Inc.*, 923 F.3d 1023, 1031 (Fed. Cir. 2019) (explaining that Federal Circuit “precedent instructs that different claim terms are presumed to have different meanings”); *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004) (“[W]hen an applicant uses different terms in a claim it is permissible to infer that he intended his choice of different terms to reflect a differentiation in the meaning of those terms.”).

Moreover, to “show or represent” is much broader than to “preview.”⁶ For example, a previous version may be represented by several different images, pictures, symbols, or signs without “presenting at least a portion of the selected previous version,” as required by claim 1. Nothing in the patent supports construing “preview” as “show or represent.” *See Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1373 (Fed. Cir. 2014) (“[T]o deviate from the plain and ordinary meaning of a claim term ... the patentee must, with some language, indicate a clear intent to do so in the patent.”).

Likewise, Datanet adds ambiguity and impermissibly broadens the claims’ scope by construing the words “previous version of the file” in the term as “an example of an earlier version that has been chosen.” An “example” of a file containing a first image could include a file with a second image that is unrelated to the first image aside from both being images. Thus, an “example” of a previous version could be something as absurd as an image or symbol with completely different content regardless of whether it had “at least a portion of” the previous version, as the claim requires.

⁶ As discussed below, “representation” means “a portrayal, depiction or denotation of a version, such as an image, picture, symbol, or sign.”

Datanet’s proposed construction also ignores the prosecution history, which confirms that “representing” and “previewing” are different. During prosecution, the Examiner found that U.S. Patent No. 5,778,395 (“Whiting,” Ex. I) disclosed the “selection to preview” limitation. *See* Ex. G (Jan. 31, 2019 Office Action) at DATA001278 (citing Whiting at col. 31, line 56). Whiting discloses an embodiment where “the user selects a file from the current disk contents and is presented with a list of all previous versions of that file contained in all the backup sets. The list is typically presented as a selectable set of icons” Ex. I, Whiting at 31:56-60. The applicant responded that: “Whiting in col. 31, line 56 merely states that ‘user selects from the desired backup set.’ However ... Whiting neither discloses the feature of ‘a selection to preview a selected previous version of the file’ nor discloses the feature of ‘presenting a presentable representation of the selected previous version ...’.” Ex. G (July 1, 2019 Response) at DATA001227.

The applicant’s statements during prosecution confirm that the claimed “previewing” is not simply presenting a list of previous versions, nor is it “representing” (e.g., through an icon) an “example” of the previous version. *See Seachange Int’l Inc. v. C-COR, Inc.*, 413 F.3d 1361, 1372-73 (Fed. Cir. 2005) (“Where an applicant argues that a claim possesses a feature that the prior art does not possess in order to overcome a prior art rejection, the argument may serve to narrow the scope of otherwise broad claim language.”); *Iridescent Networks, Inc. v. AT&T Mobility, LLC*, 933 F.3d 1345, 1352-53 (Fed. Cir. 2019) (finding that even if an applicant’s statement during prosecution does not rise to the level of disclaimer, “[a]ny explanation, elaboration, or qualification presented by the inventor during patent examination is relevant, for the role of claim construction is to capture the scope of the actual invention that is disclosed, described, and patented”) (internal quotations and citations omitted). “Represent[ing] an example” of a previous version—as Datanet proposes construing “preview” here—is what Whiting disclosed through presenting a list of icons

or file names of previous versions, and is what the applicant specifically argued was not included in “previewing” during prosecution. *See Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed. Cir. 1995) (“Claims may not be construed one way in order to obtain their allowance and in a different way against accused infringers.”).

Before Restoration. Dropbox’s construction confirms that a “preview” occurs before the restoration of the file. This aligns with the claim language, which clearly contemplates step B’s preview occur prior to step C’s restoration. This also aligns with the plain and ordinary meaning of “preview”—*i.e.*, that a “pre” view occur before another action (here, restoration) occurs. Indeed, a “preview” must be distinguished from a mere “view.”

Selected Previous Version. Datanet’s proposed construction also fails because it replaces “selected previous version” with “an earlier version.” The phrase “selected previous version” is used nine times in each of claims 1, 10, and 18 and used a similar amount of times in the dependent claims (e.g., claims 2, 6-8, 11, 14-16). To replace that term is to rewrite the claim entirely. *See, e.g., M-I LLC v. FPUSA, LLC*, No. 5:15-CV-00406-DAE, 2019 WL 13192214, at *3 (W.D. Tex. Aug. 13, 2019) (“Claims construction is not an exercise in rewriting claims ...”).

5. “retrieving the restorable representation” (claims 1, 6, 10, 14, 18)

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
search, locate and return the portrayal, depiction or denotation of a version, such as an image, picture, symbol, or sign that may be restored to a prior version of the file	No need for construction; plain and ordinary meaning. Alternatively, “Finding or getting an example rendering of the chosen file as it previously existed”

The parties’ dispute for this term centers on two issues: (1) whether “retrieving” the restorable representation means “searching, locating, and returning” it, as Dropbox proposes, or “finding and getting” it, as Datanet proposes; and (2) whether “representation” should be construed according to its common meaning, as Dropbox proposes, or rewritten as “an example rendering of the chosen file as it previously existed,” as Datanet proposes.

a. Dropbox’s proposed construction should be adopted.

Claim 1 recites the following limitation that contains the disputed term:

responsive to a selection to restore the selected previous version, ***retrieving the restorable representation*** of the selected previous version from the remote storage location and storing the selected previous version by the computational machine as the current version on the local storage location, the selected previous version available from the restorable representation of the selected previous version.

This plain language confirms that (i) the “restorable representation” is a representation “of the selected previous version,” (ii) the “restorable representation” is retrieved in response “to a selection to restore the selected previous version,” and (iii) the “restorable representation” is retrieved “from the remote storage location.” To complete the process of “retrieving the restorable representation,” the “restorable representation” must be searched for, located, and returned from the remote storage location. Ex. D, Weissman Decl. ¶ 54.

The specification also confirms Dropbox’s proposed construction. Although there is no mention of “retrieving the restorable representation” in the ’850 Patent’s specification, it discusses “searching ... for files” to “mov[e] the file” from one location to another. Ex. A, ’850 Patent at 3:40-42. The specification further states that, “[i]n keeping with the method, the first storage ***location*** is ***searched*** for an archive file.” *Id.* at 3:52-53. From this, “retrieving” must include a way of locating—i.e., through a search—before returning the file “***from***” the storage location.

Similarly, the specification is silent as to the definition of “representation.” Dropbox’s proposal that “representation” be construed as “the portrayal, depiction or denotation of a version, such as an image, picture, symbol, or sign” is consistent with the common definition of “representation.” See e.g., Ex. E at 5, *Oxford English Dictionary* (“A depiction or portrayal of a person or thing, typically one produced in an artistic medium; an image, a model, a picture.”); Ex. F, *Macmillan Dictionary* (“a sign, symbol, or picture of something”).

b. Datanet’s proposed construction should be rejected.

Datanet suggests that the term’s plain and ordinary meaning is “finding or getting an example rendering of the chosen file as it previously existed.” But replacing “retrieving” with “finding and getting” does nothing to clarify the term’s meaning. For example, “finding” does not account for any return of the restorable representation “*from*” the remote storage location to a medium in which the restorable representation can be previewed. Ex. D, Weissman Decl. ¶ 55. And “getting” is a far too generic term in the context of the claims and specification; at best, it adds further ambiguity. And replacing “the restorable representation” with “an example rendering of the chosen file as it previously existed” is similarly incorrect, as it completely rewrites the claim and introduces the idea of an “example,” which as discussed above, broadens the claim significantly.

B. U.S. Patent Nos. 8,473,478 and 9,218,348

The disputed terms in the ’478 and ’348 Patents are addressed together given their shared and consistent use across the two patents. To the extent the claim term recitations differ in a way that affects any construction or argument, the distinction is noted.

- 1. “temporary first storage location” (’478 Patent claims 1, 8-11) / “first temporary storage location” (’478 Patent claims 1, 8-11) / “temporary storage location” (’478 Patent claims 1, 8-11; ’348 Patent claims 1, 8, 12-15, 23, 24)**

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
any storage device, buffer, folder, directory or designated area or location on a storage device that serves as the first storage location to which the archive file is temporarily moved after its creation	No need for construction; plain and ordinary meaning. Alternatively, “A buffer, folder, directory or designated area on a storage device that can store data.”

Dropbox’s proposed construction is consistent with the intrinsic evidence because it reflects the lexicographical definition of “storage location” and accounts for the term’s use of the adjectives “temporary” and “first.” In contrast, Datanet’s proposed construction cherry picks

certain aspects of the lexicography and ignores the words “temporary” and “first.”

a. Dropbox’s proposed construction should be adopted.

Dropbox’s proposed construction is consistent with the intrinsic evidence. The patents define “storage location” as “any storage device, or a buffer, folder, directory or designated area on a storage device.” Ex. B, ’478 Patent, 4:25-26; Ex. C, ’348 Patent, 4:30-31. This is a lexicographical definition that controls the meaning of “first storage location” throughout. *See Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1378–79 (Fed. Cir. 2022).

The terms then modify “storage location” as being a “temporary first,” “first temporary,” or “temporary” storage location. To ensure this language is afforded meaning, Dropbox’s construction makes clear that the recited temporary storage location (i) serves as the first storage location, (ii) to which the archive file is temporarily moved after its creation. *See, e.g., Merck & Co. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”).

The surrounding claim language confirms the accuracy of this proposed construction. *See ACTV, INC. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed. Cir. 2003) (explaining that “the context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning”). For example, claims 1 and 8-11 of the ’478 Patent and claims 1 and 8 of the ’348 Patent recite the steps of, *inter alia*, (i) “creating an archive file from the operating file and storing the archive file in a temporary first storage location,” (ii) “after storing the archive file in the first temporary storage location, updating a database to indicate that the archive file is located in the first temporary storage location,” (iii) “moving the archive file from the first temporary storage location to an intermediate storage location,” and (iv) “updating the database to indicate the archive file is located in the intermediate storage location.”

From this, it is known that the term refers to the *first* storage location to which the archive

file is moved after it is created. The claim language also makes clear that, by “moving the archive file *from* the first temporary storage location,” the storage location is indeed “temporary”—i.e., the archive file is later moved to another location.

Indeed, this order of steps is critical to understanding the meaning of the disputed terms. As a matter of logic and grammar, the recited steps must be performed in the order written. *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369–70 (Fed. Cir. 2003) (citation omitted). For instance, because the claims recite the step of “creating an archive file from the operating file and storing the archive file in a temporary first storage location,” the archive file must be first created before it can be stored in a “temporary first storage location.” Likewise, the archive file must be stored “in the first temporary storage location” before a database can be updated “to indicate that the archive file is located in the first temporary storage location.” And the archive file must be moved “from the first temporary storage location to an intermediate storage location” before the database can be updated “to indicate the archive file is located in the intermediate storage location.” *See, e.g., SCVNGR, Inc. v. DailyGobble, Inc.*, 6:15-CV-00493, 2017 WL 4270200, at *10 (E.D. Tex. Sept. 26, 2017) (“Step (b) recites ‘transmitting ... the code’ generated in step (a), so step (a) must be performed before step (b).”) (emphasis omitted). The ’348 Patent’s claims also use alphabetic designations to indicate an intended order for the performance of the steps. *Intell. Ventures II, LLC v. AT & T Corp.*, No. 1:13-CV-00116, 2015 WL 4138590, at *14 (W.D. Tex. July 8, 2015).

The specification is consistent. It explains that “[t]he archive file is preferably stored in a temporary storage location, internal or external to the computer, such as input buffer 20.” *See, e.g., Ex. B, ’478 Patent*, 5:22-25; *Ex. C, ’348 Patent*, 5:28-30. It also explains that “migration of the archive file from the input buffer 20 through the output buffers 25,” which a POSITA would understand to be temporary storage locations. *Ex. B, ’478 Patent*, 5:31-34; *Ex. C, ’348 Patent*,

5:37-39. Indeed, the specification further describes “in step 115, smart data manager 15 *moves* the archive files to output buffers 25.” Ex. B, ’478 Patent, 6:29-31; Ex. C, ’348 Patent, 6:34-36.

The prosecution history of the ’478 Patent confirms Dropbox’s proposed construction. For example, the applicant amended the independent claims to add the word “temporary” to the limitation “temporary storage location” to overcome the Examiner’s rejection based on Koshisaka (U.S. Patent No. 6,629,109) and Dunphy (U.S. Patent No. 5,638,509). The applicant stated that “the Examiner concedes that Koshisaka does not teach capturing the operating file and *moving* this captured file to an alternate storage location responsive to the detection of the instruction.” Ex. H (Feb. 23, 2005 Reply to Office Action) at DATA000549. According to the applicant, “Dunphy does not teach or suggest *moving* that data from stash can 13 to an intermediate storage location and subsequently to a permanent storage location.” Ex. H (Feb. 23, 2005 Reply to Office Action) at DATA000552. For both Koshisaka and Dunphy, the applicant focused on the prior art’s purported lack of disclosure of “moving” the file in an effort to distinguish the claims from the prior art. *See Seachange*, 413 F.3d at 1372-73 (“Where an applicant argues that a claim possesses a feature that the prior art does not possess in order to overcome a prior art rejection, the argument may serve to narrow the scope of otherwise broad claim language.”). Thus, consistent with Dropbox’s proposed construction, applicant affirmed that a temporary storage location requires movement of a file or data to a subsequent storage location. *See Iridescent Networks*, 933 F.3d at 1352-53.

b. Datanet’s construction contradicts the intrinsic evidence.

Datanet’s proposed construction should be rejected. *First*, Datanet’s proposed construction does not reflect the lexicographical definition of “storage location.” As discussed, the patents define “storage location” as “*any storage device*, or a buffer, folder, directory or designated area on a storage device.” Ex. B, ’478 Patent, 4:25-26; Ex. C, ’348 Patent, 4:30-31.

Yet, by proposing a construction that references “[a] buffer, folder, directory or designated area on a storage device that can store data,” Datanet improperly removes reference to “*any storage device*” per the first phrase in the lexicography.

Second, Datanet’s proposed construction would mean that a “temporary storage location” is *any* “buffer, folder, directory or designated area on a storage device that can store data,” regardless of whether the storage location is a “temporary” or the “first” storage location. This ignores the claim’s language entirely. Indeed, under Datanet’s proposed construction, the term could encompass a permanent (i.e., non-temporary) storage location and a location to which the archive file is not “first” moved.

Third, Datanet’s proposed construction adds the following language: “designated area on a storage device that can store data.” That a storage device “can store data” does not make it a “first” or “temporary” storage location by the claims’ plain language. *See Merck & Co. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”). And Datanet’s gratuitous addition of this language impermissibly broadens the term so much that any location able to “store data” would be covered.

2. “intermediate storage location” (’478 Patent claim 1; ’348 Patent claims 1, 8, 12-15, 27, 28, 30)

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
any storage device, buffer, folder, directory or designated area or location on a storage device that is a non-permanent storage location to which the archive file is moved after the first temporary storage location and before a final destination ⁷	No need for construction; plain and ordinary meaning. Alternatively, “Any storage device, or a buffer, folder, directory or designated area on a storage device that can store data.”

⁷ Datanet initially proposed separate constructions for this term for the ’348 and ’478 Patents. Upon further review, a single construction is appropriate for both patents.

Whereas Dropbox’s proposed construction gives meaning to the word “intermediate” in the phrase “intermediate storage location,” Datanet’s proposed construction impermissibly ignores that same word and introduces irrelevant, new language that completely changes the claims’ scope.

a. Dropbox’s proposed construction should be adopted.

Dropbox’s proposed construction reflects the term’s plain and ordinary meaning. *First*, as with the previous term, this term includes the words “storage location,” which is defined in the patents. Ex. B, ’478 Patent, 4:25-26; Ex. C, ’348 Patent, 4:30-31. Thus, Dropbox’s proposed construction makes clear—consistent with the specification’s definition—that “intermediate storage location” is “*any storage device, buffer, folder, directory or designated area or location on a storage device* that is a non-permanent storage location to which the archive file is moved after the first temporary storage location and before a final destination.” From there, Dropbox’s proposed construction ensures the term “intermediate” is given meaning, as discussed below.

Second, Dropbox’s proposed construction makes clear that the “intermediate storage location” is distinct from a “permanent storage location” by explaining that an “intermediate storage location” is “*any storage device, buffer, folder, directory or designated area or location on a storage device that is a non-permanent storage location* to which the archive file is moved after the first temporary storage location and before a final destination.”

This aspect of the term’s meaning is made clear from the claim language itself. For example, claim 1 of the ’348 Patent recites “the second storage location being an *intermediate* or a permanent *storage location*.” And claim 8 recites “the second storage location being an *intermediate* or a permanent *storage location*,” “the step of transmitting the archive file from the output buffer to the *intermediate* or the permanent *storage location*,” and “updating the database to indicate that the archive file is located in the *intermediate* or the permanent *storage location*.”

This disjunctive reference to “an intermediate or a permanent storage location” indicates

that an “intermediate storage location” and a “permanent storage location” are distinct. *See, e.g., Schumer v. Lab’y Comput. Sys., Inc.*, 308 F.3d 1304, 1311 (Fed. Cir. 2002) (“Webster’s Third International Dictionary defines ‘or’ as follows: ‘used as a function word to indicate (1) an alternative between different or unlike things, states, or actions ... (2) choice between alternative things, states, or courses.’ We have consistently interpreted the word ‘or’ to mean that the items in the sequence are alternatives to each other.”) (internal citation omitted).

Although the ’478 Patent’s claims do not contain the same recitation of a disjunctive “an intermediate or a permanent storage location,” it still separately recites each of an “intermediate storage location” and a “permanent storage location.” The limitations in relevant part recite:

1. In a computing device, a method for archiving files comprising:

...
 moving the archive file to a second storage location responsive to a second event, the second storage location being *a permanent storage location*,
 ...
 moving the archive file from the first temporary storage location to an *intermediate storage location*;

 updating the database to indicate that the archive file is located in the *intermediate storage location*... .

Because the claim separately recites each of an “intermediate storage location” and a “permanent storage location,” the two terms are presumed to have different meanings—that is, an “intermediate storage location” is not “permanent.” *Merck*, 395 F.3d at 1372.

Third, Dropbox’s proposed construction makes clear that the “intermediate storage location” is a storage location that is “intermediate” to other locations by explaining that an “intermediate storage location” is “any storage device, buffer, folder, directory or designated area or location on a storage device that is a non-permanent storage location *to which the archive file is moved after the first temporary storage location and before a final destination.*”

The claim language confirms that the “intermediate storage location” must be the location

to which the archive file is moved (i) after the first temporary storage location, and (ii) before a final destination—that is, the “intermediate storage location” is intermediate to the first temporary storage location and the final destination.

For example, claim 1 of the ’348 Patent recites in relevant part: “(d) the step of transmitting the archive file to a second storage location responsive to a second event, the second storage location being an intermediate or a permanent storage location,” “(g) moving the archive file from the temporary storage location to an intermediate storage location,” “(h) updating the database to indicate the archive file is located in the intermediate storage location,” and “(i) after moving the archive file to the second storage location, updating the database to indicate the archive file is located in the second storage location.”

And claim 1 of the ’478 Patent recites similar steps of (i) “moving the archive file from the first temporary storage location to an intermediate storage location,” (ii) “updating the database to indicate that the archive file is located in the intermediate storage location,” and (iii) “after moving the archive file to the second storage location, updating the database to indicate that the archive file is located in the second storage location.”

Just as it was for the previous term (temporary storage location), this order of steps is critical to understanding the meaning of “intermediate storage location.” As a matter of logic and grammar, the recited steps must be performed in the order written. *Altiris*, 318 F.3d at 1369–70. For instance, because claims 1 of the ’478 and ’348 Patents recite “moving the archive file from the first temporary storage location to an intermediate storage location,” the archive file must be moved to the “first temporary storage location” before it is moved to “an intermediate storage location.” *See, e.g., SCVNGR*, 2017 WL 4270200, at *10. And, as discussed above, the ’348 Patent’s claims also use alphabetic designations to indicate an intended order for the performance

of the steps. *Intell. Ventures II*, 2015 WL 4138590, at *14.

Nothing in the specification suggests otherwise. For one embodiment, the specification explains that output buffer 25 is intermediate storage location between temporary input buffer 20 and final storage device 35. It further explains that, “smart data management block 15 manages the migration of the archive file from the input buffer 20 through the output buffers 25 to storage device 35.” Ex. B, ’478 Patent, 5:31-34; Ex. C, ’348 Patent, 5:36-39. And it describes that “each archive file is moved to output buffer(s) 25 corresponding to the final storage location(s) for that archive file,” thereby confirming that the archive file is moved to the “intermediate storage location” before “the final storage location(s).” Ex. B, ’478 Patent, 5:52-61; Ex. C, ’348 Patent, 5:57-66.

b. Datanet’s proposed construction should be rejected.

Datanet’s proposed construction impermissibly ignores the word “intermediate.” Specifically, Datanet proposes that the term be construed as “[a]ny storage device, or a buffer, folder, directory or designated area on a storage device that can store data.” But this would encompass *any* storage device generally, including any *non-intermediate* storage location specifically.

Datanet’s construction also introduces new language: “designated area on a storage device that can store data.” That a storage device “can store data” does not make it an “*intermediate* storage location,” as claimed. And construing the term in this way would broaden it so any location that “can store data” would be covered.

3. “final destination” (’478 Patent claim 1; ’348 Patent claim 1)

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
a location to which the archive file is last moved	No need for construction; plain and ordinary meaning. Alternatively, “Any storage device, or a buffer, folder, directory or designated

Dropbox's Proposed Construction	Datanet's Proposed Construction
	area on a storage device that can store data."

Whereas Dropbox's proposed construction gives meaning to the word "final" in the disputed term and respects the distinction between "destination" and "storage location" as used in the claims, Datanet's proposed construction impermissibly ignores the word "final" and conflates "destination" and "storage device" despite their distinct usage in the claim language.

a. Dropbox's proposed construction should be adopted.

The intrinsic evidence supports Dropbox's proposed construction. The claims recite "final destination" as separate from other "storage location" terms, such as "temporary storage location," "intermediate storage location," "a second storage location," or a "permanent storage location." This confirms that the recited "final designation" is not the same as these storage locations. *See, e.g., SIPCO, LLC v. Emerson Elec. Co.*, 794 F. App'x 946, 949 (Fed. Cir. 2019) ("The claim language clearly requires two separate addresses: the 'receiver address' and the 'scalable address.' Because the patentee chose to use different terms to define the 'receiver address' and the 'scalable address,' we presume that those two terms have different meanings.").

Dropbox's proposed construction of "final destination" also comports with the plain and ordinary meaning of "final" and "destination." Consistent with ordinary vernacular, "destination" means "a location" and "final" means it is the last location to which the archive file is moved. *See, e.g., Littelfuse, Inc. v. Mersen USA EP Corp.*, 29 F.4th 1376, 1381 (Fed. Cir. 2022) (explaining that "the district court was correct in seeking to give meaning to the term 'fastening stem' by looking to the meaning of the words 'fastening' and 'stem' as used in the patent").

b. Datanet's proposed construction should be rejected.

Datanet proposes that "final destination" be construed as "any storage device, or a buffer, folder, directory or designated area on a storage device that can store data." This proposed

construction should be rejected because it impermissibly ignores both the plain language of the claims and specification. Specifically, it conflates “final destination” with any “storage location,” which is defined in the patents as “any storage device, or a buffer, folder, directory or designated area on a storage device.” Ex. B, ’478 Patent, 4:25-26; Ex. C, ’348 Patent, 4:30-31.

But “[d]ifferent claim terms are presumed to have different meanings.” *Bd. of Regents of the Univ. of Tex. Sys. v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008). To construe “final destination” the same as any “storage location” would be to render the phrase “final destination” superfluous. *See, e.g., Cat Tech LLC v. TubeMaster, Inc.*, 528 F.3d 871, 885 (Fed. Cir. 2008) (rejecting construction which would render a claim limitation meaningless). And the choice to use “final destination” rather than “final storage location,” where “storage location” is used throughout the claims confirms that “final destination” and “storage location” cannot carry the same meaning. *SimpleAir, Inc. v. Sony Ericsson Mobile Commc’ns AB*, 820 F.3d 419, 431 (Fed. Cir. 2016) (“The choice to use ‘data channel’ in claim 1 rather than ‘data feed,’ notwithstanding use of the latter elsewhere in the patent, lends further support to our conclusion that ‘data feed’ does not carry the same meaning as ‘data channel.’”).

4. “event” (’478 Patent claims 1, 8-11; ’348 Patent claims 1, 8, 12-15, 26, 27)

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
a triggering notification or message about a storage device status or the status of an operation performed on a file	No need for construction; plain and ordinary meaning. Alternatively, “happening.”

a. The intrinsic and extrinsic evidence supports Dropbox’s proposed construction.

Dropbox’s proposed construction is consistent with the intrinsic evidence. This term appears in claims 1 and 8-11 of the ’478 Patent and claims 1, 8, 12-15, and 26-27 of the ’348. In the claims, the term “event” is used in the context of triggering a step—e.g., “the step of *identifying*

presence of the archive file in the temporary storage location *responsive to the occurrence of a first event*” (’348 Patent, claim 1(c)), “*searching* the first temporary storage location for the archive file *responsive to the occurrence of a first event*” (’478 Patent, claim 1).

The claim language also confirms that an “event” may be a message but is not so limited; instead, it may be something slightly broader like a notification—e.g., “wherein the second event includes a message indicating when the second storage location is available” (’348 Patent, claim 12(d)), “wherein the second event includes a message from a timer” (’348 Patent, claim 13(d); ’478 Patent, claim 9).

And the claim language confirms that the triggering notification or message that constitutes an “event” is about a storage device status or the status of an operation performed on a file—e.g., “wherein the second event includes a message indicating when the second storage location is available” (’478 Patent, claim 10; ’348 Patent, claim 12(d)), “wherein the first event comprises one of the following: a message from a process that created the archive file from the operating file, a message from the resident program, or a message from a timer” (’348 Patent at claim 26).

The specification also supports Dropbox’s construction. It describes “[e]xemplary events” as including “indicating when storage device 35 is connected and ready for use, messages indicating when storage device 35 is inserted/removed, full, defective, etc., and messages indicating when storage device 35 is disconnected or unavailable, and messages from a storage device timer sent at time intervals controlled by the timer or at time intervals controlled by the user.” *See, e.g.*, Ex. B, ’478 Patent, 5:61-6:1; Ex. C, ’348 Patent, 5:66-6:6.

Finally, Dropbox’s construction is consistent with a POSITA’s understanding of the term “event” as used in the field. Ex. D, Weissman Decl. ¶¶ 56-59.

b. Datanet’s proposed construction should be rejected.

Datanet’s construction of “event” as “happening” merely supplants the disputed term with

an ambiguous term that would need to be construed. But claim construction is “not an obligatory exercise in redundancy.” *EmeraChem Holdings, LLC v. Volkswagen Grp. of Am., Inc.*, 714 F. App’x 995, 997 (Fed. Cir. 2017) (citation omitted). Instead, it is to resolve the parties’ dispute, which Datanet’s proposed construction would not do. *See, e.g., O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008) (“When the parties present a fundamental dispute regarding the scope of a claim term, it is the court’s duty to resolve it.”).

5. “timer” (’478 Patent claims 8 & 10; ’348 Patent claim 26)

Dropbox’s Proposed Construction	Datanet’s Proposed Construction
device or component that measures and reports time intervals	No need for construction; plain and ordinary meaning. Alternatively, “a mechanism, control device, or software that can count, record or indicate time or intervals”

The crux of the dispute for this term is whether it encompasses not only a device and component that measures and reports time intervals, as Dropbox proposes, but also “can count, record, or indicate time” generally, as Datanet proposes.

a. The intrinsic and extrinsic evidence supports Dropbox’s proposed construction.

Dropbox’s proposed construction comports with the intrinsic evidence. The term “timer” is used consistently throughout the asserted claims, often as part of the phrase “a message from a timer.” But, the specification provides additional guidance. For example, it explains that “messages from an input buffer timer” are “sent at *time intervals controlled by a timer* or at time intervals selected by the user.” Ex. B, ’478 Patent, 5:44-47; Ex. C, ’348 Patent, 5:49-51. It also explains that “messages from a storage device timer” are “sent at *time intervals controlled by the timer* or at time intervals controlled by the user.” Ex. B, ’478 Patent, 5:66-6:2; Ex. C, ’348 Patent, 6:4-7. As such, the intrinsic evidence supports that the timer is a device or component that both measures and reports time intervals.

Dropbox’s proposed construction is also consistent with technical dictionary definitions and a POSITA’s understanding as a whole. *See* Ex. D, Weissman Decl. ¶¶ 62-66.

b. Datanet’s proposed construction should be rejected.

Datanet’s proposed construction is inconsistent with the term’s plain and ordinary meaning to a POSITA. *See* Ex. D, Weissman Decl. ¶ 66. Datanet broadens the term to cover not only a device or component that measures and reports time intervals, but also one that “record[s] or indicate[s] time intervals.” The difference is important. Whereas measuring and reporting time intervals encompasses a quantitative passage of time (e.g., 2 seconds), recording and indicating time intervals as Datanet proposes would encompass something like a stamp that indicated the actual time at which something occurred (e.g., 1:00 PM). *See* Ex. D, Weissman Decl. ¶¶ 65-66. The result is that Datanet’s proposed construction conflates a “timer” (which measures and reports time intervals) with a clock (which simply indicates time). *See* Ex. D, Weissman Decl. ¶ 66. But there is no intrinsic support for Datanet to rewrite the claim in this manner.

Finally, Datanet’s construction is inconsistent with technical dictionary definitions and a POSITA’s understanding as a whole. As explained by Dr. Weissman, a timer functions to measure the passage of time rather than to report time on a clock. *See id.*

IV. CONCLUSION

For the foregoing reasons, the court should adopt Defendant Dropbox’s proposed claim constructions.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on July 26, 2023, a true and correct copy of the foregoing response was served on all counsel of record who have appeared in this case via the Court's CM/ECF system per Local Rule CV-5.

/s/ Elizabeth M. Chiaviello
Elizabeth M. Chiaviello

Appendix A – Agreed Constructions

Patents/Claims	Term	Dropbox's Construction
'478: 1, 8-11 '348: 1, 8, 12-15, 30	computing device	a personal computer, a laptop or notebook computer, a server, a hand-held computing device, a PDA or a PAL. The term computing device is not specific to the kind of operating system being run on Such computing device, and includes devices running Microsoft operating systems, Apple Macintosh operating systems, UNIX operating systems, Linux operating systems, and other operating systems
'348: 16, 17, 26	resident program	an operating system (OS) or other program that has control over file operations such as 'read', 'write', 'save', 'rename', 'delete', 'copy', 'move', 'open', 'close', etc.
'478: 1, 2, 3, 5, 8-11 '348: 1-5, 8, 10-15, 23, 24, 27, 28, 30, 31 '850: 1, 6, 10, 14, 18	storage location	any storage device, or a buffer, folder, directory or designated area on a storage device
'478: 3 '348: 3, 10	network attached storage device	any storage device connected directly to a network to which a first computing device is also temporarily or permanently connected, or any storage device connected to a second computing device that is also temporarily or permanently connected to the network to which the first computing device is temporarily or permanently connected
'478: 5 '348: 5, 11, 28	Internet storage area network	any storage area (device, collection of devices, etc.) that can be accessed by the computing device when the computing device is temporarily or permanent connected to the Internet
'348: 4, 28	a peer-to-peer storage device	any storage area (device, collection of devices, etc.) that can be accessed by the computing device when it is sharing resources with other network or internet accessible computers
'478: 2 '348: 2, 28	personal attached storage device	any internal or external storage device connected to a computing device
'478: 1, 8-11 '348: 1, 8, 12-15	temporally proximate	just before and/or just after