

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

DATANET LLC,

Plaintiff,

v.

DROPBOX, INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

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

Jury Trial Demanded

DEFENDANT DROPBOX, INC.'S REPLY CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. DISPUTED TERMS OF U.S. PATENT NO. 10,585,850	1
1. “responsive to a selection to not restoring the previous version”	1
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”	2
3. “substantially imperceptible impact ... from a user’s point of view”	4
4. “a selection to preview a selected previous version of the file”	5
5. “retrieving the restorable representation”	6
III. DISPUTED TERMS OF U.S. PATENT NOS. 8,473,478 AND 9,218,348.....	8
1. “temporary first storage location” / “first temporary storage location” / “temporary storage location”	8
2. “intermediate storage location”	9
3. “final destination”	10
4. “event”	11
5. “timer”	12
6. “archive file”	13
IV. CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Allen Eng'g Corp. v. Bartell Indus., Inc.</i> , 299 F.3d 1336 (Fed. Cir. 2002).....	1
<i>Bio-Rad Lab'ys, Inc. v. Int'l Trade Comm'n</i> , 998 F.3d 1320 (Fed. Cir. 2021).....	15
<i>Biogen MA Inc. v. EMD Serono, Inc.</i> , 976 F.3d 1326 (Fed. Cir. 2020).....	13
<i>Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prod. Grp., LLC</i> , 879 F.3d 1332 (Fed. Cir. 2018).....	2
<i>Hytera Commc'ns Co. v. Motorola Sols., Inc.</i> , 841 F. App'x 210 (Fed. Cir. 2021)	9
<i>ICU Med., Inc. v. Alaris Med. Sys., Inc.</i> , 558 F.3d 1368 (Fed. Cir. 2009).....	12
<i>Intamin Ltd. v. Magnetar Techs., Corp.</i> , 483 F.3d 1328 (Fed. Cir. 2007).....	14
<i>McRO, Inc. v. Bandai Namco Games Am. Inc.</i> , 959 F.3d 1091 (Fed. Cir. 2020).....	12
<i>Nystrom v. TREX Co., Inc.</i> , 424 F.3d 1136 (Fed. Cir. 2005).....	12
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	12
<i>Red Rock Analytics, LLC v. Samsung Elecs. Co.</i> , No. 2:17-cv-101, 2018 WL 1806859 (E.D. Tex. Apr. 16, 2018)	9
<i>SCVNGR, Inc. v. DailyGobble, Inc.</i> , No. 6:15-CV-493, 2017 WL 4270200 (E.D. Tex. Sept. 26, 2017).....	9
<i>Sinorgchem Co., Shandong v. Int'l Trade Comm'n</i> , 511 F.3d 1132 (Fed. Cir. 2007).....	14
<i>Thorner v. Sony Comput. Entm't Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	2, 12
Statutes	
5 U.S.C. § 112(4)	14

I. INTRODUCTION

In its responsive brief, Datanet LLC (“Plaintiff” or “Datanet”) relies on inapposite case law and portions of the intrinsic record irrelevant to the terms or disputes. Where it has no response to Dropbox’s arguments, Datanet either summarily dismisses them or ignores them altogether.

II. DISPUTED TERMS OF U.S. PATENT NO. 10,585,850

1. “responsive to a selection to not restoring the previous version”

Claims 6 and 14 are indefinite. Datanet’s opposition confirms that claims 6 and 14 are invalid as indefinite because their requirements are incompatible with those of the independent claims from which they depend. Indeed, Datanet admits that the acts of “restoring” and “not restoring” are opposing terms. *See* Dkt. 60 at 8. Dropbox agrees.

While Datanet asserts that a “user can (pre)view and restore multiple times across various versions of files” (*id.*), Datanet’s own explanation for how dependent claims 6 and 14 are practiced confirm that only *one* restoration takes place: restoring the *second selected previous version*. For instance, Datanet concedes that the first selected previous version is **never** restored because the second selected previous version is restored instead. *Id.* at 7 (“[T]he selection **not** to restore the previous version but instead to restore a second previous version.”). But the first selected previous version **must** be restored under step (C) of independent claims 1 and 10 such that the first selected version is stored as “the current version.” Datanet is attempting to effectively read out step (C) from the dependent claims to preserve validity. *Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002) (indefinite claims should not be rewritten to preserve their validity).

Dr. Malek also confirms that a user may make multiple selections to preview when contemplating which version to restore but ultimately decides on a single, selected previous version to restore. Dkt. 60 at 8 (“A POSITA would understand that a user could select and preview multiple previous versions before deciding to restore a selected previous version.”). In fact, the

images from the provisional that Datanet cites (Dkt. 60 at 7) show *none* of the actions in step (C) occur. A user’s selection of the “Close” button instead of the “Restore” option results in a selection “to not restor[e] the previous version” as recited in claim 6(B2), and no restoration of the first selected version required by claim 1(C) occurs. *See* Ex. J at ¶¶ 16-18.

NetJumper is inapposite. Dkt. 60 at 8. The issue in *NetJumper* was not, as here, whether the limitations of the dependent claim were impossible to concurrently practice with the limitations of the independent claim. Instead, the dependent claim at issue in *NetJumper* was a Markush claim, and the parties disputed whether the limitation “responsive to a selection of the second icon” was directed to all alternative elements listed in a group from which the clause followed.¹

Datanet’s construction should be rejected. Datanet’s proposed construction adds ambiguity while improperly inserting new terms—e.g., “earlier version” and “another version”—into the otherwise plain and ordinary language of claims 6 and 14. Datanet also injects a user’s state of mind by reading out the “selection” requirement and replacing it with a “wish.” This neither clarifies the term’s meaning nor saves it from invalidity. Dkt. 43 at 5-6. And, if not indefinite, there is no lexicography or disavowal to deviate from the term’s plain and ordinary meaning. *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012).

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”

Datanet’s proposed construction should be rejected because it misconstrues and re-writes the claim language. According to Datanet, in the example of a file having multiple versions v1 to v5, the claimed “storing the selected previous version [e.g., v2] ... as the current version on the

¹ Allegedly “similar claim language” in different patents (Dkt. 60 at 8) is irrelevant to the indefiniteness inquiry. *Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prod. Grp., LLC*, 879 F.3d 1332, 1346 (Fed. Cir. 2018) (indefiniteness of similar claim language in unrelated patents “should be read as limited to the particular claim and specification at issue in that case”).

local storage location” could result in v2 being stored as v6 on the local storage location. *See* Dkt. 60 at 10. But, as Dropbox explained (Dkt. 43 at 8), the claims require the selected previous version be stored “as the current version” (v5), referring to the antecedent “a current version.” Datanet’s construction would incorrectly allow the previous version to be stored as a new current version—e.g., v5 would be “a/the current version” and v6 would be “a new [or second] current version”—which is incorrect. *See* Dkt. 60 at 10.

The provisional application (Dkt. 60-4) supports Dropbox, not Datanet. It references the previous version “overwriting” (i.e., replacing) the current version. For example, it explains that the selection to restore will result in the system “**overwriting** it [the current version] with the copy the user is about to restore.” *Id.* at 38.² It elaborates that:

Also prior to actually restoring the file, the restoration process should determine if the backed up file **will overwrite a file** of the same name on the users PC, and if so, if the version of the file on the users PC **is on the top level of the AccuSafe revision “stack”**. **If such is not the case**, AccuSafe must first backup the users file to the AccuSafe Media Device, then perform the restoration function. This will assure that no version of a file is lost as a result of the restoration process.

Id. at 148; *see id.* at 125 (“The AS restore process will determine if the file to be restored will overwrite a file of the same name and provide options to the users.”). In other words, before overwriting a file (e.g., v5), the system checks whether the file name of the restored file will overwrite a file that is not “on the top level of the AccuSafe revision ‘stack’” (e.g., that is not the current version). *Id.* If a file that is not the current version (e.g., v3) will be overwritten, the system backs up that v3 file so as not to lose v3. But if the version to be overwritten is the current version (e.g., v5), the system need not backup v5 because the purpose of the restoration process is to

² The provisional includes the same set of presentation slides titled “Fujitsu AccuSafe™ Prototype Walk-Through.” Dkt. 60-4 at 4-61, 255-83. The version of the slides Datanet cites on page 10 of its brief includes black markings that conveniently obscures the “over” portion of “overwriting” in the slide presented. *Compare id.* at 38, *with id.* at 272.

overwrite v5 with a previous version (e.g., v2) such that v2 overwrites (or replaces) v5.

Datanet’s proposed construction also improperly introduces new terms—“earlier version” and “most recent version”—that have no basis in the claim language and only serve to unduly restrict the scope. Datanet’s construction conflicts with the intrinsic record and a POSITA’s understanding of this claim term in the relevant field of art. Ex. J at ¶¶ 19-22. Thus, Datanet’s proposed construction should be rejected.

3. “substantially imperceptible impact ... from a user’s point of view”

Datanet confirms why claims 9 and 17 are indefinite. *First*, Datanet fails to identify anything that “provide[s] enough certainty to one of skill in the art” to understand what “substantially imperceptible” means “when read in the context of the invention.” Dkt. 60 at 11. Datanet cites one part of the specification describing “momentarily delaying the execution of step 215,” *id.*, which does not clarify how long a “momentar[y] delay[]” could be while remaining “substantially imperceptible.” Datanet next points to Figure 3, which does not supply the missing certainty. *Id.* at 12. Figure 3 merely states that the process occurs in “[r]eal time, with minimized performance impact.”

Second, Datanet contends that “substantially imperceptible” could be measured by (1) CPU performance impact, (2) time delay, or (3) potentially both. Dkt. 60 at 13-14. If anything, these inconsistent and competing possibilities confirm the lack of reasonable certainty to a POSITA. Ex. J at ¶¶ 23-17.

Third, Dr. Malek’s cited timing metrics also do not change the result.³ Dkt. 60-5 at 20. Those metrics state that, for a 0.1 second delay, a “user feel[s] that the system is reacting instantaneously,” that “during delays of more than 0.1 but less than 1.0 second [] the user does

³ Datanet failed to disclose Usability Engineering by Jakob Nielsen, or any specific extrinsic publications, in its Disclosure of Extrinsic Evidence served on July 12, 2023

lose the feeling of operating directly on the data,” that 1 second delays are “about the limit for the user’s flow of thought to stay uninterrupted,” and that “10 seconds is about the limit for keeping the user’s attention focused on the dialog.” *Id.* at 20, 80. Dr. Malek cites these metrics but nowhere even attempts to delineates what purportedly constitutes “imperceptib[ility],” let alone “substantial imperceptibility.” Here again, the competing possibilities underscore the lack of certainty.

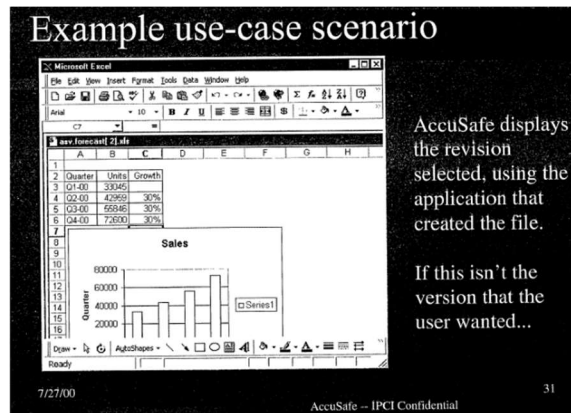
Fourth, Datanet compares “substantially imperceptible” to terms like “substantially uniform,” “substantially completely wetted” and “substantially vertical face.” Dkt. 60 at 12-13. But in each of these limitations, “substantially” modifies a well understood and objective term: uniform means same, wetted means wet, and vertical means straight up and down. In contrast, imperceptible has no definitive meaning to a POSITA (Dkt. 43-4, Weissman Decl. ¶ 27), is a subjective term tied to individual *perception*, and varies by system. *See* Dkt. 43 at 9.

Finally, Datanet contends Dropbox has “failed to consider the claim element as a whole,” suggesting that considering the limitation “from a user’s point of view” somehow changes the outcome. Dkt. 60 at 14. But Datanet misses the mark. It is the “user’s point of view,” which requires the POSITA to “consult the unpredictable vagaries of any one person’s opinion,” that increases the term’s indefiniteness. *Id.* at 9-11. Indeed, Datanet’s example about “stepp[ing] out for coffee” proves the point. *Id.* at 13. If a user only indulges in espresso from a local coffee shop, a one-minute delay may not be perceived as a “substantially imperceptible” impact on performance because one minute is not enough time to “step out for coffee.” In contrast, a user content with drip coffee from a communal coffee maker can “step out for coffee” during a one-minute delay.

4. “a selection to preview a selected previous version of the file”

Datanet does not dispute that including “example” (Dkt. 43 at 13), “represent” (*id.* at 12-13), and “earlier version” (*id.* at 15) add ambiguity and wrongly broadens the claims’ scope. As such, Datanet’s construction should be rejected. And any remaining arguments are misplaced.

Preview means View the Content. Datanet asserts that “preview” does not mean “view the content” because “people routinely watch movie ‘previews.’” Dkt. 60 at 17. But, putting aside that the example ignores the field of art at issue here, a movie preview shows the content of the movie.⁴ And Datanet’s citations to the provisional support Dropbox. Specifically, because Datanet cannot point to anything in the ’850 Patent, Datanet suggests that the Provisional shows the claimed previewing functionality. Dkt. 60 at 16 (citing Dkt. 60-4 at 33). But both purported examples of a preview (one of which is shown on the right) allows a user to view the selected previous version’s content. *Id.* at 33-34 (right), 35-36. That is exactly what Dropbox’s construction reflects.



Before Restoration. Datanet asserts that the claimed preview need not occur before restoration. *Id.* at 17. But there is no logical or grammatical basis for any other order. Even the provisional references an alleged preview step *before* restoration. *See* Dkt. 60-4 at 33, 35 (selection to preview); 34, 36 (preview); 37-40 (restoration). And the other claims are consistent. For example, claim 6—though indefinite, as discussed above—recites “after the presenting of (B) and responsive to a selection to not restoring the previous version.” This shows that (i) the claims require an order and (ii) the previewing step occurs *before* the selection to (or not to) restore.

5. “retrieving the restorable representation”

Dropbox’s proposed construction reflects how “retrieving” necessarily means searching, locating, and returning. In contrast, Datanet’s proposed construction improperly equates “retrieving” with “finding and getting.” Indeed, Datanet concedes that “retrieving” must mean at

⁴ Should additional clarification on “view the content” be needed, Dropbox proposes that “view the content” could be replaced with “view *at least a portion of* the content.”

least “returning,” Dkt. 60 at 20, which is meaningfully different than merely “finding” or “getting,” *see* Dkt. 43 at 17. And “getting” does nothing to clarify where the representation is returned *from*.

The specification confirms Dropbox’s construction by discussing a “search” for files in a particular “location.” Dkt. 43-1 at 3:40-42, 3:52-53; Dkt. 43 at 16. Datanet does not identify anything that indicates “retrieving” can be done through anything other than a “search.” Indeed, even Datanet’s decision to include “finding” in its proposed construction appears to connote searching. Instead, Datanet argues that “something can be ‘retrieved’ without searching or locating it—if you already know where it is.” Dkt. 60 at 20. But even if you know where something is supposed to be, you still must search to locate it. And even so, Datanet fails to identify anything in the specification or claims showing that the system already knows where the file is.

Moreover, Datanet’s desk lamp analogy reinforces Dropbox’s construction. *Id.* In retrieving a *desk* lamp, the lamp’s location in the office is already known because it is a lamp that sits on a *desk*. But a generic lamp can be on a desk, on the floor of a certain corner of the office, in a closet, etc. Thus, retrieving a file (lamp) from a remote storage location (office) without any indication whether that file is in a folder within the remote storage (desk, floor, or closet) would require a search within the remote storage location to locate the file.

Datanet also asserts that an “example” “[d]oes not need to be an exact copy of the previous version.” Dkt. 60 at 19. But Datanet does not dispute that an “example” could also be a file with content *completely different* from the file to be restored. For example, “[a]n ‘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.” Dkt. 43 at 13. Under Datanet’s construction, a representative encrypted file, compressed file, or “delta” file could be an “example” of the previous file even if it does not share any content with the previous version of the file. Thus, Datanet adding “an

example” is nonsensical and improperly broadens the claim scope.

At bottom, “representation” requires at least something *of* the previous version in the representative file. *Id.* at 16. And Dropbox’s construction appropriately requires at least *some* shared content between the files.

III. DISPUTED TERMS OF U.S. PATENT NOS. 8,473,478 AND 9,218,348

1. “temporary first storage location” / “first temporary storage location” / “temporary storage location”

The parties agree that the patents define “storage location.”⁵ Dkt. 43 at 18; Dkt. 60 at 22. But they disagree about how it should be interpreted when qualified with “temporary” or “first.”

Datanet accuses Dropbox of “appending” words to the definition of “storage location” (Dkt. 60 at 23). But none of the three iterations of the disputed phrase recites “storage location” alone. As such, Dropbox’s proposed construction properly gives meaning to the full phrases including the terms “temporary” and “first.” Dkt. 43 at 18-19. In contrast, Datanet’s proposed construction ignores these qualifiers, effectively reading them out of the claims.

In fact, Datanet does not dispute that its construction would mean 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 “first” storage location. *Id.* at 21. Nor does it dispute that its construction could cover a permanent (non-temporary) storage location and a location to which the archive file is not first moved. *Id.*

Datanet also accuses Dropbox of construing “temporary storage location” from the ’348 Patent to require a particular sequence when it, unlike the other two iterations of the term, “does

⁵ Even so Datanet does stick to the definition of “storage location” as provided in the patents. Instead, it (i) removes reference to “any storage device”, and (ii) adds the following language: “designated area on a storage device that can store data.” Dkt. 60 at 22. Datanet identifies no valid basis for doing so.

not include the word ‘first.’” Dkt. 60 at 24. But Datanet misses the point.

First, a claim need not recite “first,” “second,” etc., for it to require a particular sequence of steps. *See Hytera Commc’ns Co. v. Motorola Sols., Inc.*, 841 F. App’x 210, 218 (Fed. Cir. 2021) (steps must be performed in order where each “provides an antecedent basis for the steps that follow”); *Red Rock Analytics, LLC v. Samsung Elecs. Co.*, No. 2:17-cv-101, 2018 WL 1806859, at *4-*8 (E.D. Tex. Apr. 16, 2018) (“and which in turn” required specific sequence); *SCVNGR, Inc. v. DailyGobble, Inc.*, No. 6:15-CV-493, 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).”).

Second, the recited steps here must be performed in the order written as a matter of logic and grammar. Dkt. 43 at 18-19 (citing cases). For example, even though the ’348 Patent uses the term “temporary storage location” instead of “first temporary storage location” or “temporary first storage location,” the order of the performed steps still matters:

- Because the claims recite the step of “creating an archive file from the operating file and storing the archive file in a temporary storage location,” *see, e.g.*, Dkt. 43-3 at 8:50-54, the archive file must be first created before it can be stored in a “temporary storage location.” *See* Dkt. 43 at 19.
- The archive file must be stored “in the temporary storage location” before a database can be updated “to indicate that the archive file is located in the temporary storage location.” *See id.* Indeed, the full limitation recites: “*after storing the archive file in the temporary storage location*, updating a database to indicate that the archive file is located in the temporary storage location.” Dkt. 43-3 at 8:62-64.
- The archive file must be moved “from the 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.” *Id.* at 8:66-9:2; *see also* Dkt. 43 at 19.

2. “intermediate storage location”

Datanet does not dispute that its construction would encompass **any** “storage device, or a buffer, folder, directory or designated area on a storage device that can store data,” regardless of whether it is “intermediate” or not. Dkt. 43 at 25. Nor does it dispute that its construction would

broaden the term so that *any location* capable of storing data would be covered. *Id.* Indeed, although Datanet acknowledges that “storage location” is defined in the patents (Dkt. 60 at 24), it fails to incorporate that definition into its construction for “intermediate *storage location*” and instead adds unsupported language. *See* Dkt. 43 at 25.

At the same time, Datanet accuses Dropbox of “appending” words to the definition of “storage location.” Dkt. 60 at 24-25. But, unlike the words that Datanet appends to the patents’ definition of “storage location,” Dropbox maintains the patents’ definition and adds words only to account for the qualifying term in the phrase “*intermediate storage location*.” Dkt. 43 at 22-25.

Datanet also contends that an “intermediate storage location” is not located after a “temporary storage location” and before a “final destination”; instead, an “intermediate storage location” need be located only before the claimed “second storage location.” Dkt. 60 at 25. This is incorrect. 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. Dkt. No. 43 at 23-24. For example, Datanet ignores how the specification explains an output buffer 25 is the intermediate storage location between temporary input buffer 20 and final storage device 35. *Id.* at 25.

3. “final destination”

Datanet does not dispute that Dropbox’s proposed construction comports with the plain and ordinary meaning of “final” and “destination.” *Compare id.* at 26, with Dkt. 60 at 25. Similarly, Datanet does not dispute that its proposed construction would mean “final destination” is *any* “storage device, or a buffer, folder, directory or designated area on a storage device that can store data,” regardless of whether the storage location is an “intermediate” storage location or not. Dkt. 43 at 25. And Datanet does not dispute that construing the term in this way would broaden it

so *any location* that “can store data” would be covered.

Datanet does not maintain the definition of “storage location” as provided in the patents. Instead, it adds the following language: “designated area on a storage device that can store data.”

Id. In its brief, Datanet identifies no valid basis for doing so.

Instead, Datanet argues that Dropbox’s proposed construction of “a location to which the archive file is last moved” is improper because the claims do not explicitly recite “moving the archive file to a final destination.” Dkt. 60 at 25-26. But a POSITA would understand that the claimed “determining a final destination for the archive file” means determining a *last* storage location after movement of the archive file, regardless of whether the last storage location is *second*. Ex. J at ¶¶ 36-37; Dkt. 43 at 25.

4. “event”

Datanet’s construction of “event” as “happening” adds ambiguity not clarity. Indeed, nowhere does Datanet explain what constitutes a “happening,” what that would mean to a POSITA, or where there is any support in the intrinsic evidence for its redefinition of the term.

Presumably recognizing the flaws in its original proposal, Datanet now construes “event” as “an action or occurrence to which a program might respond.” Dkt. 60 at 26-27. Datanet and Dr. Malek now cite to an unreliable dictionary definition of “event” as “an action or occurrence, often generated by the user, to which a program might respond – for example, a key press, a button click, or a mouse movement.”⁶ *Id.* at 26. But this definition is inapt. A computing device and/or smart management system (and *not a user* via a key, button, or mouse) performs the claimed “event.” See Dkt 43 at 28. And to limit an “event” to something that is user-initiated would be inconsistent with the examples from the specification. See *id.*

⁶ Datanet and Dr. Malek conveniently delete the phrases “often generated by the user” and “for example, a key press, a button click, or a mouse movement” from their proposed construction.

Datanet also cherry-picks a singular mention of “backup events” to suggest a broader construction. Dkt. 60 at 26. But the specification describes an “event” as “a triggering notification or message about a storage device status or the status of an operation performed on a file.” Dkt. 43 at 27-28. Perhaps that could be *part of* a backup. But there is no lexicography or disavowal that warrants limiting “event” to some sort of backup event. *See Thorner*, 669 F.3d at 1366.

Finally, Datanet’s proposed constructions unduly broaden the term’s scope. A “happening” or “an action or occurrence to which a program might respond” could conceivably encompass *anything*, regardless of its relation to the claimed invention. Thus, Datanet’s dictionary definitions cannot reflect the plain and ordinary meaning to a POSITA. *See, e.g. McRO, Inc. v. Bandai Namco Games Am. Inc.*, 959 F.3d 1091, 1099 (Fed. Cir. 2020) (rejecting argument that term should be given broad scope per a technical dictionary that contradicted use in the specification); *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1145 (Fed. Cir. 2005) (“[I]t is improper to read the term to encompass a broader definition simply because it may be found in a dictionary, treatise, or other extrinsic source.”).

Finally, rather than defend these shortcomings, Datanet accuses Dropbox of importing limitations from the specification. Dkt. 60 at 27. Not so. Although Dropbox consults the specification for guidance on the term’s meaning, it does not limit the meaning to the exemplary events described therein. As the Federal Circuit has explained, “the line between construing terms and importing limitations can be discerned with reasonable certainty and predictability” where the “focus remains on understanding how a [POSITA] would understand the claim terms.” *ICU Med., Inc. v. Alaris Med. Sys., Inc.*, 558 F.3d 1368, 1374 (Fed. Cir. 2009). And that understanding is based on “the entire patent.” *Id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, (Fed. Cir. 2005).

5. “timer”

Datanet misses the mark on “timer.”⁷ **First**, Datanet incorrectly asserts that the specification does not support a “timer” reporting “time intervals.” Dkt. 60 at 28. As Dropbox explained, the specification discusses “time intervals” as it relates to “timer” on at least five occasions. Dkt. 43 at 29. In contrast, “indicate time” is included nowhere. **Second**, Datanet makes no effort to reconcile its construction that wrongly conflates the functions of a timer and a clock. *Id.* at 30. Beyond a conclusory statement that its construction reflects the term’s “everyday meaning,” Dropbox cites nothing in support. **Third**, whereas Dr. Weissman’s opinion comports with technical definitions, which show a timer is “used to measure time intervals,” Dkt. 43-4 at 24, Dr. Malek relies on only unsupported assumptions, Dkt. 60-5 at 26.

6. “archive file”

Datanet concedes, as it must, that Dropbox’s construction matches the patents’ definition of the term. Dkt. 60 at 29; Dkt. 60-1 at 4:12-16 (defining “Archive File” in section titled “Definitions”). In contrast, Datanet uses the patent’s lexicography only “as a base for its proposal” and “has slightly modified this definition.” Dkt. 60 at 29. The incorrect result is as follows:

Patents’ Definition of “Archive File”	Datanet’s Proposed Construction
A file containing all of the data of an operating file in a native or altered format and/or a file containing at least some of the data of an operating file and including references to the location of the remainder of the data of the operating file.	“ 1) one or more files containing all of the data of an operating file in a native or altered format and/or 2) one or more files containing at least some of the data of an operating file in a native or altered format and including [with or without] references to the location of the remainder of the native or altered data of the operating file.”

There are many problems with this allegedly “slight[]” modification. **First**, the patent’s lexicography controls, and Datanet identifies no reason to deviate from it.⁸ *See, e.g., Biogen MA*

⁷ Dropbox does not dispute that software could constitute a “timer,” Dkt. 60 at 28, as long as it measures and reports time intervals, as Dropbox proposes.

⁸ Because Datanet’s proposed construction deviates from the patents’ definition of “archive file,” it is not “consistent with...the inventor’s statement in the specification.” Dkt. 60 at 30.

Inc. v. EMD Serono, Inc., 976 F.3d 1326, 1336 (Fed. Cir. 2020) (rejecting construction that “fails to give effect to [plaintiff’s] explicit definition” in the specification and explaining that “[w]e must respect this lexicographic choice”); *Sinorgchem Co., Shandong v. Int’l Trade Comm’n*, 511 F.3d 1132, 1136 (Fed. Cir. 2007) (explaining that “the inventor’s lexicography governs” and “the patentee must be bound by the express definition”).

Second, Datanet’s attempt to “include[] ‘in a native or altered format’ under the second option” is unsupported. Dkt. 60 at 29. As Datanet appears to acknowledge, the use of “and/or” in the patents’ definition of “archive file” is disjunctive, thereby addressing two “types” of an “archive file.” The first is “a file containing all of the data of an operating file in a native or altered format.” The second is “a file containing at least some of the data of an operating file.” Because “in a native or altered format” is tied only to the first type of “archive file” before the “and/or,” adding “in a native or altered format” to the second type of “archive file” is to rewrite the definition.

The ’348 Patent’s claims 20 and 22 do not support stretching “in a native or altered format” to the other side of the “and/or.” *Id.* at 29-30. Claim 20 requires the archive file to comprise “at least some data of the operating file,” which is consistent with the second type of “archive file” in the patents’ definition. And claim 22 simply narrows claim 15’s scope to one of the two types—i.e., “a file containing all of the data of an operating file in a native or altered format.” *Compare* Dkt. 43-3 at 4:16-21, *with id.* at claim 22. Indeed, dependent claim 22 must be narrower. 5 U.S.C. § 112(4) (a dependent claim must “contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed”); *Intamin Ltd. v. Magnetar Techs., Corp.*, 483 F.3d 1328, 1335 (Fed. Cir. 2007) (“An independent claim impliedly embraces more subject matter than its narrower dependent claim.”).

Third, Datanet rewrites the final clause of the lexicography, which states: “*and including*

references to the location of the remainder of the data of the operating file.” Datanet turns that clause on its head to mean “[*with or without*] references to the location of the remainder of the native or altered data of the operating file,” thereby removing the requirement and improperly broadening the definition. *Bio-Rad Lab ’ys, 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.”). Indeed, Datanet does not and cannot meaningfully defend this change. *See* Dkt. 60 at 29 n.8.

Fourth, adding “1)” and “2)” will mislead the jury into believing that the same, final clause (“including references to the location of the remainder of the data of the operating file”) modifies only the second type of “archive file.” That is incorrect. The clause begins with the conjunction “and” is followed by the present participle “including,” which marks the beginning of a modifying phrase. That phrase acts to describe the noun “file” that appears in each of the disjunctive phrases preceding it. *See* Ex. K. Indeed, the parallel use of participles—i.e., “[a] file containing,” “a final containing,” and “including references”—confirms the same: an “archive file” is (i) “*A file containing* all of the data of an operating file in a native or altered format ... *and including* references to the location of the remainder of the data of the operating file,” and/or (ii) “*a file containing* at least some of the data of an operating file *and including* references to the location of the remainder of the data of the operating file.”

IV. CONCLUSION

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

Dated: August 31, 2023

Respectfully submitted,

/s/ Elizabeth M. Chiaviello
Elizabeth M. Chiaviello
Texas Bar No. 24088913
elizabeth.chiaviello@morganlewis.com
MORGAN, LEWIS & BOCKIUS, LLP
1717 Main Street, Suite 3200
Dallas, Texas 75201
(214) 466-4000 Telephone
(713) 466-4001 Facsimile

Robert C. Bertin*
D.C. Bar No. 469582
robert.bertin@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
Telephone: (202) 739-3000
Facsimile: (202) 739-3001

Michael J. Lyons*
California Bar No. 202284
michael.lyons@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1400 Page Mill Road
Palo Alto, CA 94304
T: 650.843.4000
F: 650.843.4001

Karon N. Fowler*
karon.fowler@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive, Suite 2800
Chicago, Illinois 60606
T: 312.324.1000
F: 312.324.1001

*Admitted *pro hac vice*

Attorneys for Defendant Dropbox, Inc.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on August 31, 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 Chiaviello
Elizabeth Chiaviello