

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FLIP PHONE GAMES, INC.,

Plaintiff,

v.

PLR WORLDWIDE SALES LIMITED,

Defendant.

Case No. 2:23-cv-0139-JRG

**PLR WORLDWIDE SALES LIMITED’S PROPOSED TERMS AND CLAIM
ELEMENTS FOR CONSTRUCTION**

Pursuant to Rule 4-2 of the Local Patent Rules (“P.R.”) of the Eastern District of Texas and the Scheduling Order governing this action, PLR Worldwide Sales Limited (“Playrix”) hereby submits its Preliminary Proposed Claim Constructions and Extrinsic Evidence for claim terms, phrases, and/or clauses of U.S. Patent Nos. 9,731,202 (the “’202 patent”), 10,617,958 (the “’958 patent”), 11,117,056 (the “’056 patent”), 8,688,089 (the “’089 patent”), and 9,427,662 (the “’662 patent”) (collectively, “the Patents-in-Suit”).

Playrix attaches preliminary claim constructions and extrinsic evidence for the parties’ proposed terms as Exhibit A. For all terms not identified in Exhibit A, Playrix contends these terms should be construed consistently with the plain and ordinary meaning, as would be understood by a person skilled in the art at the time of the invention, provided that positions set forth in Plaintiff’s infringement contentions do not change.

Playrix bases these constructions upon its current knowledge, understanding, and belief as to the facts and information available as of this date. Playrix reserves the right to further amend these preliminary proposed claim constructions as the parties proceed with discovery and work toward the preparation of a final Joint Claim Construction Statement. In particular, Playrix reserves the right to propose additional constructions or modified constructions in response to any

further supplemental infringement contentions served by Plaintiff Flip Phone Games, Inc. (“FPG”), as the contentions served by Plaintiff on December 15, 2023—the date such contentions were due under the Court’s Docket Control Order—were incomplete and remain deficient, failing to put Playrix on notice of FPG’s infringement theories. Plaintiff has confirmed that it would not oppose such additions or modifications. See 1-26-2024 Email from Michael Morlock to Ron Hagiz (“if Playrix believes any additional terms or modified constructions are needed after FPG supplements its infringement contentions, FPG will not oppose that as untimely as long as disclosed shortly after the infringement contentions and well before the April 2 deadline for FPG’s Opening Claim Construction Brief.”). Playrix also specifically reserves the right to update its citations to relevant extrinsic evidence, such as inventor testimony and testimony from attorneys responsible for prosecuting the asserted patents, as well as to identify additional dictionary definitions and prior art.

To confirm the proper construction, Playrix may rely on the patents and other references cited during the prosecution of the asserted patents. Playrix also may rely on one or more of the prior art systems and/or publications identified in its Invalidity Contentions or *Inter Partes* Review Petitions challenging the Patents-in-Suit to explain the state of the art and/or to show the ordinary meaning of certain claim terms. Furthermore, Playrix may rely on any public statement of Plaintiff or any current or former employee thereof; any of the named inventors and/or prosecuting attorneys; and/or information from other sources, including discovery produced in this case.

Playrix may also rely on documents produced by Plaintiff pursuant to Patent Local Rule 3-2 (“Document Production Accompanying Disclosure”), to the extent those documents evidence the ordinary meaning of claim terms and/or any different meaning assigned to claim terms by the inventors. Playrix may also rely upon briefing, orders, and other evidence or declarations

submitted in the *Inter Partes* Review Petitions challenging the Patents-in-Suit to explain the state of the art and/or to show the ordinary meaning of certain claim terms.

Playrix may also rely on testimony from one or more expert witnesses, including any identified by Plaintiff. Such expert evidence may address the relevant field of art, the level of ordinary skill in the art, the definiteness of certain terms, and the meaning that certain claim terms would have to a person of ordinary skill in the art based on the asserted patents' disclosure and associated prosecution history, and any extrinsic evidence offered by Plaintiff or Playrix. Such expert may additionally rebut any extrinsic evidence offered by Plaintiff, including any expert opinions.

This disclosure is preliminary. Playrix's discovery and investigation in connection with this action is ongoing. Playrix has not received all documents that may be relevant to these disclosures, and Plaintiff has not yet produced all relevant information and documents. Playrix has not yet deposed all of the named inventors and the prosecuting attorneys. Playrix reserves the right to rely on documents, discovery responses, and testimony collected during the discovery process. Playrix also reserves the right to add to, subtract from, or otherwise amend this description of extrinsic evidence as part of the ongoing process or as part of preparing a Joint Claim Construction and Prehearing Statement in this action, or in response to any supplemental infringement contentions.

To the extent necessary to clarify the issues for the Court or otherwise avoid ambiguity or confusion, Playrix reserves the right to address a word or phrase separately from the terms listed in Exhibit A, if addressing that word or phrase separately will assist in the resolution of the parties' disputes.

Dated: January 30, 2024

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**Pro hac vice* applications pending or
forthcoming

Exhibit A

Claim Term #	Patent(s)	Claim Terms and Phrases Requiring Construction	Proposed Construction	Extrinsic Evidence
1	'089 patent claims 1 and 6 '662 patent claims 1, 5, 13, and 16	"non-promotional"	Indefinite	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
2	'089 patent claims 1 and 6	"background object"	an object that exists outside the primary focus of game play and is not presented to the player as an object to be manipulated	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
3	'958 patent claims 1, 5, 8, and 12 '056 patent claims 1 and 9 '089 patent claims 3, 7, and 8	"pre-selected"	Indefinite	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
4	'662 patent claim 1	"preset location"	Indefinite	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
5	'202 patent claim 1	"checking what updated video-game content to send"	Plain meaning Playrix reserves the right to amend this construction after FPG	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have

Claim Term #	Patent(s)	Claim Terms and Phrases Requiring Construction	Proposed Construction	Extrinsic Evidence
			serves its supplemental infringement contentions.	understood the claim term in light of the specification and prosecution history.
6	'958 patent claim 1	"check what pre-selected in-game advertising to send"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
7	'056 patent claim 1	"identify, in response to receiving the request, what in-game video game content to send"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
8	'089 patent claims 1, 4-6, and 8-10 '662 patent claims 1, 5, 7, 13, and 16	"hot spot" / "hot spot information"	an in-game feature that includes an activation element and a content element that is triggered by the activation element. / No separate construction necessary	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
9	'089 patent claim 1	"determining the hot spot information to provide to the mobile device based upon the communication"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.

Claim Term #	Patent(s)	Claim Terms and Phrases Requiring Construction	Proposed Construction	Extrinsic Evidence
10	'089 patent claim 6	"utilize the request to determine the hot spot information"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
11	'662 patent claims 1 and 13	"designating a... location in-game associated with activating the hot spot based on the coordinate information"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
12	'662 patent claims 1, 3, 4, 13, and 15	"coordinate information"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
13	'202 patent claims 1 and 6-9	"the video-game content"	Indefinite	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
14	'202 patent claim 1	"based on one of the factors"	Indefinite	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.

Claim Term #	Patent(s)	Claim Terms and Phrases Requiring Construction	Proposed Construction	Extrinsic Evidence
15	'958 patent claims 7 and 14 '056 patent claims 7 and 15	"the distribution"	Indefinite	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
16	'958 patent claims 1 and 8 '089 patent claim 6	"interface"	Indefinite	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
17	'202 patent claims 1 and 3 '089 patent claims 6-8	"the mobile communication device" / "the communications device"	Indefinite	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
18	'662 patent claim 4	"the coordinate information comprises one or more predefined in-game locations"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
19	'662 patent claim 7	"a version identifier for the downloaded hot spot information"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.

Claim Term #	Patent(s)	Claim Terms and Phrases Requiring Construction	Proposed Construction	Extrinsic Evidence
20	'662 patent claim 1 and 13	"user-identification information"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.
21	'662 patent claims 10 and 19	"the hidden content is displayed in a pop-up window"	Plain meaning Playrix reserves the right to amend this construction after FPG serves its supplemental infringement contentions.	Playrix may rely upon expert testimony from Mr. Garry Kitchen (1) to show the skill level of a person of ordinary skill in the art; and (2) to show how a person of ordinary skill in the art would have understood the claim term in light of the specification and prosecution history.

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2024, the foregoing document was served via electronic mail on all counsel of record.

/s/ Nima Hefazi

Nima Hefazi