

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

FLIP PHONE GAMES INC.,	§	
	§	
Plaintiff,	§	Civil Action No. 2:23-cv-00139-JRG
	§	
v.	§	
	§	
PLR WORLDWIDE SALES LIMITED,	§	
	§	
Defendant.	§	

JOINT CLAIM CONSTRUCTION STATEMENT

Pursuant to the Scheduling Order entered August 11, 2023 (Dkt. 34) and Local Patent Rule 4-3, Plaintiff Flip Phone Games Inc. (“FPG”) and Defendant PLR Worldwide Sales Limited (“Playrix”) jointly submit this Joint Claim Construction Statement.

I. Local Patent Rule 4-3(a)(1): The Construction of Claim Terms on Which the Parties Agree

The parties do not presently agree on the constructions of any terms in the asserted claims 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 Asserted Patents”).

II. Local Patent Rule 4-3(a)(2): Each Party’s Proposed Construction of Disputed Claim Terms and Identification of Evidence

The parties’ competing proposed constructions, and the intrinsic and extrinsic evidence they cite to support their respective constructions, are set forth in the attached exhibits.

- **Exhibit A** provides a side-by-side comparison of the parties’ competing proposed constructions for each disputed claim term, phrase, or clause in the Asserted Patents.
- **Exhibit B** includes FPG’s identification of all references from the specification or prosecution history of the Asserted Patents, respectively, that support FPG’s positions, as

well as an identification of any extrinsic evidence known to FPG on which it intends to rely either to support its position or to oppose any other party's position.

- **Exhibit C** includes Playrix's identification of all references from the specification or prosecution history of the Asserted Patents, respectively, that support Playrix's positions, as well as an identification of any extrinsic evidence known to Playrix on which it intends to rely either to support its position or to oppose any other party's position.

Each party also reserves the right to reply on additional intrinsic and/or extrinsic evidence to oppose a proposed construction(s) or position(s) of the other party.

III. Local Patent Rule 4-3(a)(3): The Anticipated Length of the Claim Construction Hearing

The parties generally agree to abide by any time limits set by the Court with respect to the Claim Construction Hearing in this case. That being said, the parties believe that the Claim Construction Hearing for this case should not take longer than three (3) hours with the time to be divided equally between the parties.

IV. Local Patent Rule 4-3(a)(4): Anticipated Witnesses at the Claim Construction Hearing

The parties do not plan to present live testimony at the Claim Construction hearing.

V. Local Patent Rule 4-3(a)(5): List of Issues Not Heretofore Addressed

None.

VI. Local Patent Rule 4-3(b): Expert Testimony

Pursuant to Local Patent Rule 4-3(b), herewith today, each party is serving a disclosure of expert testimony consistent with Fed. R. Civ. P. 26(a)(2)(B)(i)-(ii) or 26(a)(2)(C) for any expert on which it intends to rely to support its proposed claim construction or indefiniteness position or to oppose any other party's proposed claim construction or indefiniteness position.

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DATED: March 1, 2024

Respectfully submitted,

By: /s/ Steven D. Moore

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**Pro hac vice* applications pending or
forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2024, all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3):

/s/ Steven D. Moore

EXHIBIT A

No.	Patent(s), Claim(s)	Term	FPG's Construction	Playrix's Construction
1	'202 Patent, claim 1	"based on one of the factors"	No construction needed; Plain and ordinary meaning	Indefinite
2	'089 Patent, claims 1, 2, 4–6, 8–10 '662 Patent, claims 1, 3, 5–7, 12, 13, 15–17, 20	"hot spot" / "hot spot information"	"a location or item, sometimes hidden within the game, that triggers additional specialized content" (No separate construction needed for "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 needed for "hot spot information")
3	'089 Patent, claims 1, 6 '662 Patent, claims 1, 5, 13, 16	"non-promotional"	No construction needed; Plain and ordinary meaning	Indefinite
4	'089 Patent, claims 1, 6	"background object"	No construction needed; Plain and ordinary meaning	"an object that exists outside the primary focus of gameplay and it not presented to the player as an object to manipulate"
5	'662 Patent, claim 1	"preset location"	No construction needed; Plain and ordinary meaning	Indefinite

EXHIBIT B

No.	Patent(s), Claim(s)	Claim Term	FPG's Construction	Evidence¹
1	'202 Patent, claim 1	“based on one of the factors”	No construction needed; Plain and ordinary meaning	<u>'202 Patent:</u> Abstract, 10:33–45, 11:32–38, 14:1–8 <u>'202 Patent File Wrapper:</u> • September 5, 2013 Notice of Appeal and Pre-Appeal Brief • December 23, 2013 Appeal Brief • June 25, 2014 Request for Reconsideration • April 20, 2015 Appeal Brief • February 2, 2017 Patent Board Decision <u>Extrinsic Evidence:</u> • Playrix's Petition for <i>Inter Partes Review</i>, IPR20024-00132. • Declaration of Dr. Jose Zagal, IPR20024-00132. • Declaration of Robert Akl, D.Sc. Regarding Claim Construction.

¹ Each of the '202 Patent, '958 Patent, and '056 Patent share a common specification and figures. For simplicity, FPG identifies the portions of that common specification and figures that support FPG's proposed constructions and positions with respect to the '202 Patent, but FPG reserves the right to rely on the same disclosures in the '958 Patent and '056 Patent. Similarly, the '089 Patent and '662 Patent share a common specification and figures. For simplicity, FPG identifies the portions of that common specification and figures that support FPG's proposed constructions and positions with respect to the '089 Patent, but FPG reserves the right to rely on the same disclosures in the '662 Patent.

No.	Patent(s), Claim(s)	Claim Term	FPG's Construction	Evidence ¹
2	'089 Patent, claims 1, 4–6, 8–10 '662 Patent, claims 1, 5, 7, 13, 16	“hot spot” / “hot spot information”	“a location or item, sometimes hidden within the game, that triggers additional specialized content” (No separate construction needed for “hot spot information”)	<u>'089 Patent:</u> Abstract, 1:6–8. 1:60–2:2, 2:6–20, 2:21–44, 2:66–3:2, 3:18–25, 4:7–15, 6:5–14, 6:36–7:24, Figs. 2A–2B. <u>'089 Patent File Wrapper:</u> • August 6, 2010, Reply to Office Action • December 28, 2010, Reply to Office Action <u>Extrinsic Evidence:</u> • Playrix's Petition for <i>Inter Partes Review</i>, IPR20024-00133. • Declaration of Dr. Jose Zagal, IPR20024-00133. • Playrix's Petition for <i>Inter Partes Review</i>, IPR20024-00209. • Declaration of Dr. Jose Zagal, IPR20024-00209

No.	Patent(s), Claim(s)	Claim Term	FPG's Construction	Evidence ¹
3	'089 Patent, claims 1, 6 '662 Patent, claims 1, 5, 13, 16	"non-promotional"	No construction needed; Plain and ordinary meaning	<u>'089 Patent:</u> Abstract, 1:42–52, 1:53–59, 1:60–2:2, 2:34–44, 3:18–25, 4:7– 16, 4:32–47, 4:48–63, 4:63–5:8, 6:36–7:24, 8:1–10, 10:14–25, 11:4–12, 13:19–55, Figs. 2A–2B. <u>'089 Patent File Wrapper:</u> • November 3, 2011, Amendment and Remarks • December 2, 2011, Amendment and Request for Continued Examination • March 13, 2013, Office Action • July 15, 2013, Amendment and Remarks <u>Extrinsic Evidence:</u> • Playrix's Petition for <i>Inter Partes Review</i>, IPR20024- 00133. • Declaration of Dr. Jose Zagal, IPR20024-00133. • Playrix's Petition for <i>Inter Partes Review</i>, IPR20024- 00209. • Declaration of Dr. Jose Zagal, IPR20024-00209. • Declaration of Robert Akl, D.Sc. Regarding Claim Construction.

No.	Patent(s), Claim(s)	Claim Term	FPG's Construction	Evidence ¹
4	'089 Patent, claims 1, 6	"background object"	No construction needed; Plain and ordinary meaning	<u>'089 Patent:</u> 1:53–59, 6:36–7:24, Figs. 2A–2B. <u>'089 Patent File Wrapper:</u> • February 2, 2011, Office Action • May 2, 2011, Amendment and Remarks • August 2, 2011, Office Action • November 3, 2011, Amendment and Remarks • December 2, 2011, Amendment and Request for Continued Examination • March 13, 2013, Office Action • July 15, 2013, Amendment and Remarks <u>Extrinsic Evidence:</u> • Playrix's Petition for <i>Inter Partes Review</i>, IPR20024-00133. • Declaration of Dr. Jose Zagal, IPR20024-00133. • Playrix's Petition for <i>Inter Partes Review</i>, IPR20024-00209. • Declaration of Dr. Jose Zagal, IPR20024-00209.

No.	Patent(s), Claim(s)	Claim Term	FPG's Construction	Evidence ¹
5	'662 Patent, claim 1	“preset location”	No construction needed; Plain and ordinary meaning	<u>'662 Patent:</u> 13:19–27, Figs. 4A–4B. <u>Extrinsic Evidence:</u> • Playrix’s Petition for <i>Inter Partes Review</i>, IPR20024-00209. • Declaration of Dr. Jose Zagal, IPR20024-00209. • Declaration of Robert Akl, D.Sc. Regarding Claim Construction.

EXHIBIT C

No.	Patent(s), Claim(s)	Claim Term	Playrix's Construction	Evidence²
1	'202 Patent, claim 1	"based on one of the factors"	Indefinite	Intrinsic Evidence: '202 patent at 5:56-6:2, 6:3-10, 11:32-45, 13:66-14:8. Extrinsic Evidence: Declaration of Henry Houh Regarding Claim Construction.
2	'089 Patent, claims 1, 4-6, 8-10 '662 Patent, claims 1, 5, 7, 13, 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 needed for "hot spot information")	Intrinsic Evidence: '089 patent at 2:21-44, 2:66-3:2, 4:7-16, 6:5-14, 6:15-31, 6:55-61, 7:12-24, 7:53-8:10, 11:41-12:11, 12:12-27, Claims 1, 6, Fig. 3A-3B. '662 FH, 4-25-2016 Amendment & Remarks IPR2024-00133, Paper 7 IPR2024-00209, Paper 6

² Each of the '202 Patent, '958 Patent, and '056 Patent share a common specification and figures. For simplicity, Playrix identifies the portions of that common specification and figures that support Playrix's proposed constructions and positions with respect to the '202 Patent, but Playrix reserves the right to rely on the same disclosures in the '958 Patent and '056 Patent. Similarly, the '089 Patent and '662 Patent share a common specification and figures. For simplicity, Playrix identifies the portions of that common specification and figures that support Playrix's proposed constructions and positions with respect to the '089 Patent, but Playrix reserves the right to rely on the same disclosures in the '662 Patent.

No.	Patent(s), Claim(s)	Claim Term	Playrix's Construction	Evidence ²
3	'089 Patent, claims 1, 6 '662 Patent, claims 1, 5, 13, 16	"non-promotional"	Indefinite	Intrinsic Evidence: '089 patent at 1:50-52, 2:34-44, 4:32-62, 6:44-54, 6:62-7:24, 8:1-10, 10:14-25, 11:4-12, 13:28-38, Claims 1, 6 Extrinsic Evidence: Declaration of Henry Houh Regarding Claim Construction.

No.	Patent(s), Claim(s)	Claim Term	Playrix's Construction	Evidence ²
4	'089 Patent, claims 1, 6	"background object"	"an object that exists outside the primary focus of gameplay and it not presented to the player as an object to manipulate"	Intrinsic Evidence: '089 patent at Abstract, 1:27-41, 1:60-2:2, 2:9-20, 2:27-33, 4:7-31, 4:62-5:8, 6:5-14. 6:36-7:24, 7:52-67, 10:14-25, Fig. 2A-B, Fig. 3B. '089 FH, 5-2-2011 Amendment & Remarks; 11-3-2011 Amendment & Remarks; 12-2-2011 Amendment & Remarks; 3-13-2013 Office Action; 7-15-2013 Amendment & Remarks; Notice of Allowability; U.S. Pub. No. 20060205510 (Lauper); U.S. Pub. No. 20060111979 (Chu); EP1087312A2 (Uskela). IPR2024-00133, Paper 7; International Patent Pub. No. WO 2008/008038 (Ho); International Patent Pub. No. WO 2000/070489 (Jiau); International Patent Publication WO 2006/071246 to Sturman (Sturman).

No.	Patent(s), Claim(s)	Claim Term	Playrix's Construction	Evidence ²
5	'662 Patent, claim 1	"preset location"	Indefinite	Intrinsic Evidence: '089 patent at 2:8-20, 2:66-3:2, 4:62-5:8, 5:62-6:4, 6:62-7:11, 11:41-52, 13:19-28, Fig. 3A-3B. Extrinsic Evidence: Declaration of Henry Houh Regarding Claim Construction.