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

LEXOS MEDIA IP, LLC,	§	
	§	
v.	§	Civil Action No. 2:22-CV-00169-JRG
	§	(Lead Case)
AMAZON.COM, INC.	§	
	§	
LEXOS MEDIA IP, LLC,	§	
	§	Civil Action No. 2:22-CV-00175-JRG
v.	§	(Member Case)
	§	
TARGET CORPORATION		
	§	
LEXOS MEDIA IP, LLC,	§	
	§	Civil Action No. 2:22-CV-00273-JRG
v.	§	(Member Case)
	§	
OFFICE DEPOT, LLC.	§	

PARTIES' JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to Patent Rule 4-3 and the Court's First Amended Docket Control Order (Dkt. 87), Plaintiff Lexos Media, IP LLC ("Plaintiff" or "Lexos Media") and Defendants Amazon.com, Inc., Target Corporation, and Office Depot, LLC (collectively, "Defendants") hereby submit their Joint Claim Construction and Prehearing Statement.

The patents-in-suit are U.S. Patent Nos. 5,995,102 (the "'102 Patent"), 6,118,449 (the "'449 Patent"), and 7,975,241 (the "'241 Patent") (collectively, "the Asserted Patents"). The '102 Patent was issued on November 30, 1999, based upon an application filed on June 25, 1997. The '499 Patent was issued on September 12, 2000, based upon a continuation application of the '102

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Patent. The ’241 Patent was issued on July 5, 2011, based upon the same specification as in the application for the ’102 Patent. Plaintiff has asserted that Defendants have infringed Claim 72 of the ’102 Patent, Claims 1, 38, and 53 of the ’449 Patent, and Claim 35 of the ’241 Patent.

Section I below identifies the terms, phrases, or clauses within the asserted claim elements of the Asserted Patents for which the Parties have agreed as to the proper construction. Section II below and Exhibits 1-3 set forth the Parties’ proposed constructions for the disputed the terms, phrases, or clauses within the claim elements of the Asserted Patents, along with the identification of supporting intrinsic and extrinsic evidence. Section III below states the Parties’ positions regarding the length of the claim construction hearing. Section IV below addresses the expert testimony that the Parties may rely on in support of their proposed claim constructions. Section V below addresses the Parties’ current position on the need for a prehearing conference.

I. P.R. 4-3(a)(1): Agreed Claim Construction

Pursuant to Patent Rule 4-3(a)(1), the Parties have agreed to the construction of the claim terms, phrases, or clauses set forth hereto:[1]

PROPOSED CLAIM TERM	PARTIES’ PROPOSED CONSTRUCTION
“modified cursor image” *See* ’449 Patent, Claims 1 and 38; ’241 Patent, Claim 35.	“cursor image” should be construed as set forth separately. Plain and ordinary meaning.
“promotional material” *See* ’241 Patent, Claim 35.	Plain and ordinary meaning.

[1] If the Parties reach an agreement at a later date regarding any additional claim terms, the Parties plan to supplement this Joint Claim Construction and Prehearing Statement to reflect this agreement.

PROPOSED CLAIM TERM	PARTIES' PROPOSED CONSTRUCTION
"said specific image includes/including content corresponding to at least a portion of said information that is to be displayed on said display of said user's terminal" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, 53.	"an image representative of at least a portion of the subject or topic being displayed on the screen" *Lexos Media IP, LLC v. APMEX, Inc.*, No. 216CV00747JRGRSP, 2017 WL 1021366, at *5–6 (E.D. Tex. Mar. 16, 2017).
"specified content information" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38 and 53. **"content information"** *See* '241 Patent, Claim 35.	The term "specified content information" / "content information" means "information provided to a user's terminal for use in the display, such as a web page."
"visual image" *See* '241 Patent, Claim 35.	Plain and ordinary meaning.

II. P.R. 4-3(b): Disputed Claim Construction

Pursuant to Patent Rule 4-3(a)(2), the charts identifying each party's proposed construction of each disputed claim term, phrase, or clause, together with an identification of all intrinsic and extrinsic evidence are set forth in the exhibits attached hereto:

CHART	EXHIBIT(S)
Parties' Joint Claim Construction Chart	Exhibit 1
Plaintiff's Claim Construction Chart Identifying Supporting Evidence	Exhibit 2
Defendants' Claim Construction Chart Identifying Supporting Evidence	Exhibit 3

III. P.R. 4-3(a)(3): Length of Claim Construction Hearing

According to the Court's First Amended Docket Control Order (Dkt. 87) and the Court's Notice of Hearing entered on April 26, 2023, the Claim Construction Hearing is scheduled to be held on August 9, 2023 at 9:00 a.m. in Marshall, Texas before Judge Rodney Gilstrap.

Pursuant to Patent Rule 4-3(a)(3), the Parties anticipate requiring 90 minutes per side for the Claim Construction Hearing.

IV. P.R. 4-3(a)(4): Witness Testimony at Claim Construction Hearing

Pursuant to Patent Rule 4-3(a)(4), the Parties have agreed to not rely on expert witness testimony to support their claim construction arguments and hence, do not propose to call any witnesses, including experts, to provide testimony at the Claim Construction hearing.

V. Patent Rule 4-3(a)(5): Other Issues

Pursuant to Patent Rule 4-3(a)(5), the Parties do not believe that there are any other issues which might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing.

Dated: May 16, 2023

Respectfully submitted,

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TARGET CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(c) on this 16th day of May 2023. Any other counsel of record will be served by facsimile transmission and first class mail.

/s/ Eric W. Buether
Eric W. Buether

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that that counsel for the Parties have met and conferred on the 9th day of May 2023 regarding the content herein, and the Parties are all in agreement with this Joint Submission.

/s/ Eric W. Buether
Eric W. Buether

EXHIBIT 1

PARTIES' P.R. 4-3(a)(2) JOINT CLAIM CONSTRUCTION CHART OF DISPUTED CLAIM TERMS, PHRASES, OR CLAUSES

Disputed Claim Term/ Phrase/Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Defendants' Proposed Claim Construction
"corresponding to" as used in the phrase "cursor image data corresponding to a/said specific image" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, 53.	"associated with"	Plain and ordinary meaning. No construction required.
"cursor display code" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53.	"computer code for modifying the display of the cursor image"	Plain and ordinary meaning. No construction required.
"cursor display instruction" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53; '241 Patent, Claim 35.	"an instruction operable to modify the display, in conjunction with other information, of a cursor image"	Plain and ordinary meaning. No construction required.

EXHIBIT 1

Disputed Claim Term/ Phrase/Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Defendants' Proposed Claim Construction
"cursor image" and **"initial cursor image"** '102 Patent, Claim 72; '449 Patent, Claims 1, 27, 53; '241 Patent, Claim 35.	"the appearance of the cursor on a user's screen before the cursor image is modified into the specific image" (Plaintiff contends that the terms "cursor image" and "initial cursor image" should be construed together and to mean the same thing.)	**"cursor image"** – "a movable image on a display screen whose position is controlled through a user interface and that indicates the location that will be affected by input from the user interface" (Defendants contend that "cursor image" should be construed as a standalone term. Defendant's propose a plain and ordinary meaning for the terms "initial cursor image" and "said cursor image." No construction of those terms is needed beyond the construction of "cursor image.")
"cursor image data" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53.	Plain and ordinary meaning.	"data identifying the appearance of the modified cursor image"
"initial cursor image" and **"said initial cursor image"** *See* `102 Patent, Claim 72; '449 Patent, Claim 53.	As set forth above, Plaintiff contends that the terms "cursor image" and "initial cursor image" should be construed together and to mean the same thing.	"cursor image" should be construed as set forth separately. Plain and ordinary meaning for "initial cursor image" and "said initial cursor image." No construction needed beyond the construction of "cursor image."

EXHIBIT 1

Disputed Claim Term/ Phrase/Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Defendants' Proposed Claim Construction
"modifying [an initial cursor image]" *See* '102 Patent, Claim 72; '449 Patent, Claim 53. **"transforming [said initial cursor image]"** *See* '102 Patent, Claim 72; '449 Patent, Claim 53. **"modify [said cursor image]"** *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53. **"modifying [a cursor image]"** *See* '449 Patent, Claims 1 and 35; '241 Patent, Claim 35.	"changing (change) or replacing (replace) the form, shape or appearance of a cursor image"	Plain and ordinary meaning. No construction required.

EXHIBIT 1

Disputed Claim Term/ Phrase/Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Defendants' Proposed Claim Construction
"server" (computer or system) *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53; '241 Patent, Claim 35.	"one or more pieces of computer equipment and the software running on the equipment used to provide services for one or more other computers or computing devices"	Plain and ordinary meaning. No construction required.
"specific image" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53.	a "modified cursor image," and not the "cursor image" or the "initial cursor image"	"modified cursor image, which is static and representative of at least a portion of the subject or topic being displayed on the screen"
"tracks a movement" *See* '241 Patent, Claim 35.	"moves according to a movement"	Plain and ordinary meaning. No construction required.

EXHIBIT 2

PLAINTIFF'S P.R. 4-3(a)(2) CLAIM CONSTRUCTION CHART IDENTIFYING SUPPORTING EVIDENCE

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Supporting Intrinsic Evidence[1]
"corresponding to" as used in the phrase "cursor image data corresponding to a/said specific image" *See* `102 Patent, Claim 72; `449 Patent, Claims 1, 38, 53.	"associated with"	*KeyMe, LLC v. Hillman Grp., Inc.*, No. CV 19-1539-LPS, 2021 WL 243252, at *7 (D. Del. Jan. 25, 2021) ("At the hearing, Hillman also agreed that "corresponds to" is synonymous with "is associated with"). '102 Patent, 3:4-14; '102 Patent, 17:62 to 18:3.
"cursor display code" *See* `102 Patent, Claim 72; `449 Patent, Claims 1, 38, and 53.	"computer code for modifying the display of the cursor image"	`102 Patent, Abstract; `102 Patent, Figure 5; `102 Patent, 8:52-57.

[1] All references to the Asserted Patents are related to the '102 Patent unless otherwise noted.

EXHIBIT 2

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Supporting Intrinsic Evidence[1]
"cursor display instruction" *See* `102 Patent, Claim 72; `449 Patent, Claims 1, 38, and 53; `241 Patent, Claim 35.	"an instruction operable to modify the display, in conjunction with other information, of a cursor image"	`102 Patent, Abstract; `102 Patent, Fig. 4; `102 Patent, 8:52-62; `102 Patent, 10:23-41.
"cursor image" and **"initial cursor image"** *See* `102 Patent, Claim 72; `449 Patent, Claims 1, 38, and 53; `241 Patent, Claim 35.	"the appearance of the cursor on a user's screen before the cursor image is modified into the specific image" (Plaintiff contends that the terms "cursor image" and "initial cursor image" should be construed together and to mean the same thing.)	*Lexos Media IP, LLC v. APMEX, Inc.*, No. 216CV00747JRGRSP, 2017 WL 1021366, at *2–4 (E.D. Tex. Mar. 16, 2017). `102 Patent, Abstract. '102 Patent, 3: 4-15. `102 Patent, 7:5-15.
"cursor image data" *See* `102 Patent, Claim 72; `449 Patent, Claims 1, 38, and 53.	Plain and ordinary meaning.	

EXHIBIT 2

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Supporting Intrinsic Evidence[1]
"modifying [an initial cursor image]" *See* `102 Patent, Claim 72; `449 Patent, Claim 53. **"transforming [said initial cursor image]"** *See* `102 Patent, Claim 72; `449 Patent, Claim 53. **"modify [said cursor image]"** *See* `102 Patent, Claim 72; `449 Patent, Claims 1, 38, and 53. **"modifying [a cursor image]"** *See* `449 Patent, Claims 1 and 35; `241 Patent, Claim 35.	"changing (change) or replacing (replace) the form, shape or appearance of a cursor image"	`102 Patent, Abstract; `102 Patent, Figs. 7-9; `102 Patent, 4:4-12; `102 Patent, 3:51-57; `102 Patent, 9:15-20; `102 Patent, 9:10:37-41; `102 Patent, 11:34-37; `102 Patent, 11:49-61.

EXHIBIT 2

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Supporting Intrinsic Evidence[1]
"server" (computer or system) *See* `102 Patent, Claim 72; `449 Patent, Claims 1, 38, and 53; '241 Patent, Claim 35.	"one or more pieces of computer equipment and the software running on the equipment used to provide services for one or more other computers or computing devices"	*SimpleAir, Inc. v. Google, Inc.*, No. 2:13-CV-0937-JRG, 2015 WL 1906016, at *13 (E.D. Tex. Apr. 27, 2015). `102 Patent, Figure 2.
"specific image" *See* `102 Patent, Claim 72; `449 Patent, Claims 1, 38, and 53.	a "modified cursor image," and not the "cursor image" or the "initial cursor image"	*Lexos Media IP, LLC v. APMEX, Inc.*, No. 216CV00747JRGRSP, 2017 WL 1021366, at *2 (E.D. Tex. Mar. 16, 2017). `102 Patent, Abstract. `102 Patent, 2:58-62; `102 Patent, 3:4-10; `102 Patent, 3:48-50; `102 Patent, 3:62 to 4:3; `102 Patent, 7:7-9.
"tracks a movement" *See* `241 Patent, Claim 35.	"moves according to a movement"	`102 Patent, 9:39-65 `102 Patent, 16:14-20.

EXHIBIT 3

DEFENDANTS' P.R. 4-3(a)(2) CLAIM CONSTRUCTION CHART IDENTIFYING SUPPORTING EVIDENCE

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"corresponding to" as used in the phrase "cursor image data corresponding to a/said specific image" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, 53.	Plain and ordinary meaning. No construction required.	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at Abstract. • '102 patent at 2:63-3:3. • '102 patent at 3:57-4:12. • '102 patent at 4:46-49. • '102 patent at 6:54-61. • '102 patent at 8:57-59. • '102 patent File History, Dec. 14, 1998 Response to Office Action at 5, 7. • Corresponding portions of the other specifications.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"cursor display code" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53.	Plain and ordinary meaning. No construction required.	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at Abstract. • '102 patent at Fig. 5. • '102 patent at Abstract. • '102 patent at 8:52-67. • '102 patent at 9:1-30. • '102 patent File History, Apr. 8, 1999 Response to Office Action at 2-4, 7, 10. • Corresponding portions of the other specifications.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"cursor display instruction" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53; '241 Patent, Claim 35.	Plain and ordinary meaning. No construction required.	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at Abstract. • '102 patent at Fig. 4. • '102 patent at 4:31-40. • '102 patent at 8:59-67. • '102 patent at 9:1-30. • '102 patent at 11:18-30. • '102 patent File History, Apr. 8, 1999 Response to Office Action at 2-4, 7, 10. • '241 patent File History, Apr. 1, 2010 Response to Office Action at 22-25. • Corresponding portions of the other specifications.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"**cursor image**" '102 Patent, Claim 72; '449 Patent, Claims 1, 27, 53; '241 Patent, Claim 35.	"a movable image on a display screen whose position is controlled through a user interface and that indicates the location that will be affected by input from the user interface"	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at Abstract. • '102 patent at 3:26-4:3. • '102 patent at 7:5-15. • '102 patent at 7:49-55. • '102 patent at 8:28-37. • Corresponding portions of the other specifications. **Extrinsic evidence:** • IBM Dictionary of computing (1994) at p. 159. • IEEE Dictionary of Standard Electrical Terms (1996) at 244. • Webster's New World Dictionary of Computer Terms (1994) at 140. • Encyclopedia Macintosh (1990) - at 723. • Business Dictionary of Computers, (1993) at p. 79. • A Dictionary of Computing, 4th Edition, (1997) at pp. 114-15.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"cursor image data" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53.	"data identifying the appearance of the modified cursor image"	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at Abstract. • '102 patent at 7:7-9. • '102 patent at 8:18-23. • '102 patent at 8:43-67. • '102 patent at 9:1-20. • '102 patent at Fig. 3. • Corresponding portions of the other specifications.
"initial cursor image" and **"said initial cursor image"** *See* '102 Patent, Claim 72; '449 Patent, Claim 53.	"cursor image" should be construed as set forth separately. Plain and ordinary meaning for "initial cursor image" and "said initial cursor image." No construction needed beyond the construction of "cursor image."	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at Fig. 7. • '102 patent at Abstract. • '102 patent at 3:51-4:3. • '102 patent at 13:38-41. • Corresponding portions of the other specifications.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"modifying [an initial cursor image]" *See* '102 Patent, Claim 72; '449 Patent, Claim 53. **"transforming [said initial cursor image]"** *See* '102 Patent, Claim 72; '449 Patent, Claim 53. **"modify [said cursor image]"** *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53. **"modifying [a cursor image]"** *See* '449 Patent, Claims 1 and 35; '241 Patent, Claim 35.	Plain and ordinary meaning. No construction required.	**<u>Intrinsic evidence:</u>** • Claims containing the limitation. • '102 patent at Abstract. • '102 patent at 2:44-47. • '102 patent at 2:58-62. • '102 patent at 2:63-3:3. • '102 patent at 3:51-4:3. • '102 patent at 11:18-30. • '102 patent at 13:38-41. • Corresponding portions of the other specifications.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"server" (computer or system) *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53; '241 Patent, Claim 35.	Plain and ordinary meaning. No construction required.	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at Figs. 1 and 2. • '102 patent at Abstract. • '102 patent at 4:4-24. • '102 patent at 5:38-41. • '102 patent at 7:1-7. • '102 patent at 8:4-8. • Corresponding portions of the other specifications.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"specific image" *See* '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53.	"modified cursor image, which is static and representative of at least a portion of the subject or topic being displayed on the screen"	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at Abstract. • '102 patent at 2:40-43. • '102 patent at 2:58-62. • '102 patent at 6:35-46. • '102 patent at 8:54-61. • '102 patent at 11:53-55. • '102 patent at claim 57. • '449 patent at claims 18, 44, 65-66, 84-85. • '102 patent File History, Dec. 14, 1998 Response to Office Action at 35-37. • Corresponding portions of the other specifications.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendants' Proposed Claim Construction	Supporting Intrinsic and Extrinsic Evidence
"tracks a movement" *See* '241 Patent, Claim 35.	Plain and ordinary meaning. No construction required.	**Intrinsic evidence:** • Claims containing the limitation. • '102 patent at 9:60-62. • '102 patent at 16:14-20. • '102 patent at Fig. 4, lines 221-223. • '241 patent File History, Feb. 18, 2011 Examiner's Amendment at 2-5. • Corresponding portions of the other specifications.