

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

LEXOS MEDIA IP, LLC,

Plaintiff,

v.

EBAY, INC.,

Defendant.

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Civil Action No. 6:22-cv-00648-ADA

PARTIES' JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to the Scheduling Order (Dkt. 33) and the Court's Text Order entered on October 12, 2023, Plaintiff Lexos Media, IP LLC ("Plaintiff" or "Lexos Media") and Defendant eBay, Inc. ("Defendant" or "eBay") (collectively the "Parties") hereby submit their Joint Claim Construction 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"). Plaintiff has asserted that Defendant has 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 terms, phrases, or clauses within the claim elements of the Asserted Patents, along with the identification of supporting intrinsic 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. Agreed Claim Construction

The Parties have agreed to the construction of the claim terms, phrases, or clauses set forth hereto:¹

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" '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"
"specified content information" '102 Patent, Claim 72; '449 Patent, Claims 1, 38 and 53. "content information" '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."
"cursor image data" '102 Patent, Claim 72; '449 Patent, Claims 1, 38 and 53.	Plain and ordinary meaning. No construction required.

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 Statement to reflect this agreement.

PROPOSED CLAIM TERM	PARTIES' PROPOSED CONSTRUCTION
“cursor display instruction” '102 Patent, Claim 72; '449 Patent, Claims 1, 38 and 53; '241 Patent, Claim 35.	“an instruction operable to modify the display of a cursor image”
“cursor display code” '102 Patent, Claim 72; '449 Patent, Claims 1, 38 and 53.	“computer code for modifying the display of the cursor image”
“modifying [an initial cursor image]” “modify [said cursor image]” “modifying [a cursor image]” “modified” [cursor image] “transforming [said initial cursor image]” '102 Patent, Claim 72; '449 Patent, Claims 1, 38 and 53; '241 Patent, Claim 35.	Plain and ordinary meaning. No construction required. eBay agrees that “modifying” and “transforming” are each broad enough to include the concept of “replacing” the cursor image.

PROPOSED CLAIM TERM	PARTIES' PROPOSED CONSTRUCTION
“corresponding to” as used in the phrases: “cursor image data corresponding to a specific image” “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” ’102 Patent, Claim 72; ’449 Patent, Claims 1, 38 and 53	Plain and ordinary meaning. No construction required.
“promotional material” ’241 Patent, Claim 35.	Plain and ordinary meaning. This term is subject to the printed matter doctrine and is not entitled to patentable weight.

II. Disputed Claim Constructions

The charts identifying each party’s proposed construction of each disputed claim term, phrase, or clause, together with an identification of all intrinsic 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
Defendant’s Claim Construction Chart Identifying Supporting Evidence	Exhibit 3

III. Length of Claim Construction Hearing

According to the Court's Order Setting *Markman* Hearing Held in Person (Dkt. 71), the Claim Construction Hearing is scheduled to be held on November 9, 2023 at 9:00 a.m. in Waco, Texas before Judge Derek T. Gilliland.

The Claim Construction Hearing is currently scheduled for a two hour block. The Parties believe this will be sufficient to cover all disputed terms.

IV. Witness Testimony at Claim Construction Hearing

The Parties do not propose to call any witnesses, including experts, to provide live testimony at the Claim Construction hearing. Defendant intends to rely on the declaration submitted by Dr. Kevin Almeroth in support of its Opening Claim Construction Brief. *See* Dkt. 54-1.

V. Other Issues

Plaintiff does not believe that there are any other issues which might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing. Defendant notes for the Court that, as of the date of this filing, Defendant's Motion to Dismiss (Dkt. 34) and Motion to Transfer (Dkt. 38, 43) remain pending.

Dated: October 17, 2023

Respectfully submitted,

BUETHER JOE & COUNSELORS, LLC

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**ATTORNEYS FOR PLAINTIFF
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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 on this 17th day of October 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 17th day of October 2023 regarding the content herein, and the Parties are in agreement with this Joint Submission.

/s/ Eric W. Buether
Eric W. Buether

Exhibit 1

EXHIBIT 1

**PARTIES' JOINT CLAIM CONSTRUCTION CHART
OF DISPUTED CLAIM TERMS, PHRASES, OR CLAUSES**

Disputed Claim Term/ Phrase/Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Defendant's Proposed Claim Construction
“cursor” '102 Patent, Claim 72; '449 Patent, Claims 1, 38, 53; '241 Patent, Claim 35. [Proposed by Defendant]	No construction is proper or required because the term “cursor,” standing alone, is not a claim term.	“a movable marker that indicates the location that will be affected by an input device”
“cursor image” and “initial cursor image” '102 Patent, Claim 72; '449 Patent, Claims 1, 38, 53; '241 Patent, Claim 35. [Proposed by Both Parties]	“a movable image on a display screen whose position can be controlled through a user interface” <i>Amazon</i> Case Claim Construction Order at 14	“an image of the movable marker that indicates the location that will be affected by an input device” Defendant proposes that the construction of “cursor image” should be applied consistently throughout the Asserted Patents, including as used in the phrase “modified cursor image,” which was a term proposed by Plaintiff.

**PARTIES' JOINT CLAIM CONSTRUCTION CHART
OF DISPUTED CLAIM TERMS, PHRASES, OR CLAUSES**

EXHIBIT 1

Disputed Claim Term/ Phrase/Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Defendant's Proposed Claim Construction
“server” (computer or system) '102 Patent, Claim 72; '449 Patent, Claims 1, 38, 53. [Proposed by Plaintiff]	Plain and ordinary meaning. No construction required. Plaintiff contends that the plain and ordinary meaning of the term is not “a single computer” in “a network shared by multiple users.”	Plain and ordinary meaning. No construction required. eBay contends that the plain and ordinary meaning of the term requires “a [single] computer in a network shared by multiple users.” (Dkt. 54 at 16–18).
“specific image” '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53. [Proposed by Both Parties]	The term “specific image” has its plain and ordinary meaning. No construction is required. <i>Amazon</i> Case Claim Construction Order at 21 The phrase “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” means “an image representative of at least a portion of the subject or topic being displayed on the screen.” Agreed claim construction, <i>supra</i>	“pre-generated shape and appearance of a cursor image”

**PARTIES' JOINT CLAIM CONSTRUCTION CHART
OF DISPUTED CLAIM TERMS, PHRASES, OR CLAUSES**

EXHIBIT 1

Disputed Claim Term/ Phrase/Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Defendant's Proposed Claim Construction
“modifying the cursor image to include the visual image and displaying the modified cursor image, wherein the visual image includes promotional material, and the visual image tracks a movement of the modified cursor image” [Proposed by Defendant] “the visual image tracks a movement of the modified cursor image” <i>See</i> '241 Patent, Claim 35. [Proposed by Both Parties]	Plain and ordinary meaning, but not requiring tracking with a “one-for-one linear relationship between the movement of the modified cursor image and the visual image” <i>Amazon</i> Case Claim Construction Order at 19	Indefinite.

**PARTIES' JOINT CLAIM CONSTRUCTION CHART
OF DISPUTED CLAIM TERMS, PHRASES, OR CLAUSES**

Exhibit 2

EXHIBIT 2

**PLAINTIFF’S CLAIM CONSTRUCTION CHART
IDENTIFYING SUPPORTING EVIDENCE**

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Plaintiff’s Proposed Claim Construction	Supporting Intrinsic Evidence¹
“cursor” <i>See</i> ’102 Patent, Claim 72; ’449 Patent, Claims 1, 38, 53; ’241 Patent Claim 35. [Proposed by eBay]	No construction is proper or required because the term “cursor,” standing alone, is not a claim term.	<i>Amazon</i> Claim Construction Order at 10-11, 22. 102 Patent, at 14:28-46
“cursor image” and “initial cursor image” ’102 Patent, Claim 72; ’449 Patent, Claims 1, 27, 53; ’241 Patent, Claim 35. [Proposed by Both Parties]	“a movable image on a display screen whose position can be controlled through a user interface” <i>Amazon</i> Case Claim Construction Order at 21	<i>Amazon</i> Case Claim Construction Order at 14, 21.

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
“server” (computer or system) '102 Patent, Claim 72; '449 Patent, Claims 1, 27, 53; [Proposed by Lexos]	Plain and ordinary meaning. No construction required. Plaintiff contends that the plain and ordinary meaning of the term is not “a single computer” in “a network shared by multiple users.”	<i>SimpleAir, Inc. v. Google, Inc.</i>, 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. [Proposed by Both Parties]	The term “specific image” has its plain and ordinary meaning. No construction is required. <i>Amazon Case Claim Construction Order</i> at 17 The phrase “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” means “an image representative of at least a portion of the subject or topic being displayed on the screen.” Agreed claim construction, <i>supra</i>	<i>Lexos Media IP, LLC v. APMEX, Inc.</i>, No. 216CV00747JRGRSP, 2017 WL 1021366, at *2 (E.D. Tex. Mar. 16, 2017). <i>Amazon Case Claim Construction Order</i> at 17 '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.

EXHIBIT 2

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Plaintiff's Proposed Claim Construction	Supporting Intrinsic Evidence¹
“tracks a movement” <i>See</i> `241 Patent, Claim 35. [Proposed by Both Parties]	“Plain and ordinary meaning, but not requiring tracking with a “one-for-one linear relationship between the movement of the modified cursor image and the visual image” <i>Amazon</i> Case Claim Construction Order at 19	<i>Amazon</i> Case Claim Construction Order at 19 `102 Patent, 9:39-65</p> <p>`102 Patent, 16:14-20.

Exhibit 3

EXHIBIT 3

**DEFENDANT’S CLAIM CONSTRUCTION CHART
IDENTIFYING SUPPORTING INTRINSIC EVIDENCE**

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendant’s Proposed Claim Construction	Supporting Intrinsic Evidence
“cursor” ’102 Patent, Claim 72; ’449 Patent, Claims 1, 38, 53; ’241 Patent, Claim 35. [Proposed by Defendant]	“a movable marker that indicates the location that will be affected by an input device”	• ’102 patent at Abstract. • ’102 patent at 3:25–3:35. • ’102 patent at 3:35–50. • ’102 patent at 3:51–4:3. • ’102 patent at 4:32–49. • ’102 patent at 7:1–15. • ’102 patent at 7:49–55. • ’102 patent at 8:28–37. • ’102 patent at 8:57–59. • ’102 patent at 9:39–45. • ’102 patent at 11:17–22. • ’102 patent at 11:47–58. • ’102 patent at 12:60–62. • ’102 patent at 13:13–16. • ’102 patent at 13:38–41. • ’102 patent at 14:28–31. • ’102 patent at 14:54–59. • ’102 patent at 16:15–20. • ’102 patent at 17:15–24. • ’102 patent at FIG. 2. • ’102 patent at FIG. 3. • ’102 patent at FIG. 4. • ’102 patent at FIG. 5. • ’102 patent at FIG. 6.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendant's Proposed Claim Construction	Supporting Intrinsic Evidence
		• '102 patent at FIG. 7. • '102 patent at FIG. 8. • '102 patent at FIG. 9. • Corresponding citations from other Asserted Patents. • Claim language from the Asserted Patents and Related Patents.¹ • Statements made in the file histories of the Asserted Patents and Related Patents. • Intrinsic evidence identified in eBay's claim construction briefing. • Intrinsic evidence identified in the Declaration of Kevin C. Almeroth, Ph.D.
“cursor image” and “initial cursor image” '102 Patent, Claim 72; '449 Patent, Claims 1, 38, 53; '241 Patent, Claim 35.	“an image of the movable marker that indicates the location that will be affected by an input device” Defendant proposes that the construction of “cursor image” should be applied consistently	• '102 patent at Abstract. • '102 patent at 3:26–3:34. • '102 patent at 3:35–50. • '102 patent at 3:51–4:3. • '102 patent at 7:1–15.

¹ The Related Patents include U.S. Pat. Nos. 6,065,057 and 7,111,254.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendant's Proposed Claim Construction	Supporting Intrinsic Evidence
[Proposed by Both Parties]	throughout the Asserted Patents, including as used in the phrase “modified cursor image,” which was a term proposed by Plaintiff.	• '102 patent at 7:49–55. • '102 patent at 8:28–37. • '102 patent at 8:57–59. • '102 patent at 9:39–45. • '102 patent at 11:17–22. • '102 patent at 11:47–58. • '102 patent at 12:60–62. • '102 patent at 13:13–16. • '102 patent at 13:38–41. • '102 patent at 14:54–59. • '102 patent at 16:15–20. • '102 patent at 17:15–24. • '102 patent at FIG. 2. • '102 patent at FIG. 3. • '102 patent at FIG. 4. • '102 patent at FIG. 5. • '102 patent at FIG. 6. • '102 patent at FIG. 7. • '102 patent at FIG. 8. • '102 patent at FIG. 9. • Corresponding citations from other Asserted Patents. • Claim language from the Asserted Patents and Related Patents.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendant's Proposed Claim Construction	Supporting Intrinsic Evidence
		• Statements made in the file histories of the Asserted Patents and Related Patents. • Intrinsic evidence identified in eBay's claim construction briefing. • Intrinsic evidence identified in the Declaration of Kevin C. Almeroth, Ph.D.
“specific image” '102 Patent, Claim 72; '449 Patent, Claims 1, 38, and 53. [Proposed by Both Parties]	“pre-generated shape and appearance of a cursor image”	• '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 8:52–61. • '102 patent at 15:44–49. • '102 patent at 11:53–55. • '102 patent at FIG. 2. • '102 patent at FIG. 3. • '102 patent at FIG. 4. • '102 patent at FIG. 5. • '102 patent at FIG. 6. • '102 patent at FIG. 7. • '102 patent at FIG. 8. • '102 patent at FIG. 9. • Corresponding citations from other Asserted Patents.

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendant's Proposed Claim Construction	Supporting Intrinsic Evidence
		• Claim language from the Asserted Patents and Related Patents. • Statements made in the file histories of the Asserted Patents and Related Patents. • '102 patent File History, Dec. 14, 1998, Response to Office Action at 35–37. • Intrinsic evidence identified in eBay's claim construction briefing. • Intrinsic evidence identified in the Declaration of Kevin C. Almeroth, Ph.D.
“server” (computer or system) '102 Patent, Claim 72; '449 Patent, Claims 1, 38, 53. [Proposed by Plaintiff]	Plain and ordinary meaning. No construction required. Defendant contends that the plain and ordinary meaning of the term requires “a [single] computer in a network shared by multiple users.”	• '102 patent at Abstract. • '102 patent at 4:4–12. • '102 patent at 5:13–14. • '102 patent at 5:37–38. • '102 patent at 5:38–41. • '102 patent at 5:63–6:6. • '102 patent at 6:53–61. • '102 patent at 7:1–7. • '102 patent at 7:14–28. • '102 patent at 8:1–8. • '102 patent at 8:18–23.

DEFENDANT'S CLAIM CONSTRUCTION CHART**Page 5**

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendant's Proposed Claim Construction	Supporting Intrinsic Evidence
		• '102 patent at FIG. 1. • '102 patent at FIG. 2. • '102 patent at FIG. 3. • '102 patent at FIG. 6. • Corresponding citations from other Asserted Patents. • Claim language from the Asserted Patents and Related Patents. • Statements made in the file histories of the Asserted Patents and Related Patents. • Intrinsic evidence identified in eBay's claim construction briefing. • Intrinsic evidence identified in the Declaration of Kevin C. Almeroth, Ph.D.
"modifying the cursor image to include the visual image and displaying the modified cursor image, wherein the visual image includes promotional material, and the visual image tracks a movement of the modified cursor image"	Indefinite.	• '102 patent at Abstract. • '102 patent at 9:60–62. • '102 patent at 10:39–65. • '102 patent at 14:34–39. • '102 patent at 16:14–20. • '102 patent at FIG. 2.

DEFENDANT'S CLAIM CONSTRUCTION CHART

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendant's Proposed Claim Construction	Supporting Intrinsic Evidence
[Proposed by Defendant] “the visual image tracks a movement of the modified cursor image” [Proposed by Both Parties] '241 Patent, Claim 35.		• '102 patent at FIG. 3. • '102 patent at FIG. 4. • '102 patent at FIG. 6. • '102 patent at FIG. 7. • '102 patent at FIG. 8. • '102 patent at FIG. 9. • Corresponding citations from other Asserted Patents. • Claim language from the Asserted Patents and Related Patents. • Statements made in the file histories of the Asserted Patents and Related Patents. • '241 patent File History, Feb. 18, 2011, Examiner's Amendment at 2–5. • '241 Patent Notice of Allowance, Reasons for Allowance at 5–6. • Intrinsic evidence identified in eBay's claim construction briefing. • Intrinsic evidence identified in the

DEFENDANT'S CLAIM CONSTRUCTION CHART

EXHIBIT 3

Disputed Claim Term/ Phrase/ Clause for Claim Construction	Defendant's Proposed Claim Construction	Supporting Intrinsic Evidence
		Declaration of Kevin C. Almeroth, Ph.D.