

O71nsi t h

UNI TED STATES DI STRI CT COURT
SOUTHERN DI STRI CT OF NEW YORK

----- x

SI TNET LLC,

Pl ai nt i ff ,

v.

23 Ci v. 6389 (AS)

META PLATFORMS, I NC. ,

Def endant .

Hear i ng

----- x

New York, N. Y.
July 1, 2024
3:00 p.m

Bef or e:

HON. ARUN SUBRAMANI AN,

Di strict Judge

APPEARANCES

HECHT PARTNERS LLP

Att or neys for Pl ai nt i ff

BY: DAVI D L. HECHT

TREYMAINE NORRIS

and

BARCLAY DAMON LLP

Att or neys for Pl ai nt i ff

BY: DOUGLAS J. NASH

and

NARESH KANNAN

Att or ney for Pl ai nt i ff

O71nsi t h

APPEARANCES (Continued)

DAVI S POLK & WARDWELL LLP
Attorneys for Defendant
BY: ASHOK RAMANI
ALEC M. FISHER
ANDREI GRIBAKOV JAFFE
KATHERINE BI
YAO CHEN

O71nsi t h

(Case called)

THE DEPUTY CLERK: Can the parties, starting with counsel for the plaintiff, please state their appearances for the record.

MR. KANNAN: Hello. For SitNet LLC, the plaintiff in this matter, my name Naresh Kannan. I am joined by Doug Nash of the firm of Barclay Damon and also by David Hecht and Treymaine Norris of the firm Hecht Partners.

THE COURT: Good afternoon.

MR. KANNAN: Good afternoon.

MR. RAMANI: Good afternoon, your Honor. From Davis Polk, on behalf of Meta Platforms, Ashok Ramani, joined by my colleagues Katherine Bi, Andrei Gribakov Jaffe, Alec Fisher, and Yao Chen.

And per your Honor's Standing Order 7.A, Mr. Gribakov Jaffe, Mr. Fisher, and Ms. Chen will all be doing their first *Markman* arguments today.

THE COURT: Great. Fantastic.

MR. RAMANI: Your Honor, if I may, we are also joined by associate general counsel for litigation from Meta Platforms, Jordan Bekier, and in-house counsel Sylvia Medina, as well as our paralegal who carried all of the printouts, Qingyi Ye.

THE COURT: All right. Good. There's no better way to start a holiday week than to look at some patents.

O71nsi t h

1 So let's start with situational network.

2 Who is speaking on behalf of SitNet?

3 MR. KANNAN: I am, your Honor.

4 THE COURT: How about for Meta?

5 MS. BI: I am, your Honor.

6 THE COURT: Okay. Great.

7 So my first question is for SitNet, which is your
8 proposed construction of this term includes the network being a
9 subset of a larger network.

10 What is the best specification language that you would
11 think supports that limitation on a categorical basis, not with
12 respect to a particular embodiment, but generally speaking as a
13 definitional aspect of that term.

14 MR. KANNAN: I would draw the Court's attention to the
15 '454 patent at column 3, lines 60 through 67, which talks about
16 figure 1.

17 And if I may read it into the record, it states
18 referring generally to figure 1, a situational network 3000 is
19 created when an occurrence or expected occurrence of an event
20 or situation 3005 causes connections, also referred to as
21 links, to be established between within or among a set of
22 participants 250,207. The situational network allows the
23 participants 250 and 207 to interact and change information
24 over connections to or through a computer network 900 regarding
25 the event or situation 3005.

O71nsi t h

1 In that citation to the specification, and as
2 explained later in the patent, it talks about how the
3 situational network is formed out of this larger network in the
4 example, being computer network 900.

5 THE COURT: You just said larger network, but even in
6 figure 1 what indication do we have that it is not only a
7 larger network, but that it is always a larger network?

8 MR. KANNAN: If I may just quickly turn to the
9 specification.

10 So in the specification when it discusses figure 1, it
11 talks about how the situational network is formed -- and I
12 believe that the larger computer network 900 is referred to
13 elsewhere in the specification.

14 And that is where it talks about how it is, you know,
15 the situational network is formed for those participants who --
16 it is created when an occurrence or expected occurrence of a
17 situation causes the connections to be formed.

18 THE COURT: Okay. What do you make of the language
19 that -- I don't even think Meta raised this language. I think
20 you focused on this language, so maybe you can help me with it,
21 but the language immediately after the reference that you
22 cited, which is in the carryover language from columns 3 to 4.

23 Some or all of the participants included in the
24 situational network may have no prior knowledge of or
25 connection or contact with each other or other participants of

O71n s i t h

1 the situational network through any other type of social
2 network or personal interactions.

3 Doesn't that indicate that, in at least some
4 situations, the situational network doesn't take place in the
5 context of a subset of a larger network. One example you might
6 think of would be a peer-to-peer architecture, where it would
7 be just a series of connections between devices or individuals
8 who had no prior relationship through a network of any kind,
9 let alone a social network.

10 MR. KANNAN: So, your Honor, my understanding of that
11 language is that it's referring to knowledge of one another or
12 connection to one another in the context of a social network in
13 the sense that the participants could be friends or somehow
14 related to each other in the social network.

15 I don't think that's talking about saying that they
16 are not on -- you know, for example, if there are two
17 participants, they're going to both be on an internet. They
18 are going to have a connection to a larger network from that
19 standpoint.

20 THE COURT: How do you square that explanation with
21 the repeated representations in the specification that a
22 situational network could be just connections between users who
23 have devices?

24 So you don't even need any pre-existing network
25 connection. You can create those in the way that you might

O71n s i t h

1 with a peer-to-peer, kind of you can have one device call up
2 another device and connect via, like a Bespoke unique
3 connection with that device so it doesn't necessarily need to
4 be a subset of a network.

5 I agree with you that there are a number of references
6 in the patents that indicate a situational network might be a
7 subset of, I think the acronym used is an NDSN. In those
8 embodiments I think you're right, that there would be a subset
9 of a larger network. What I'm wondering is why that has to be
10 necessarily the definition in all cases.

11 MR. KANNAN: So what I would say is there is some
12 other language in the specification that talks about how the
13 situational network is formed in the context of existing
14 network technologies, including TCP/IP and ethernet, things of
15 that nature. I think that goes towards the assumption in the
16 patent that a situational network was based on users that were
17 already using the internet in some manner.

18 In addition --

19 THE COURT: Also, not to interrupt you, I apologize,
20 but on page 6 of the joint brief, in describing what the larger
21 network is in the proposed construction, you indicate that it
22 is in fact an online social network, right?

23 So I am having trouble reconciling that
24 characterization of what the larger network would be and the
25 language that I previously directed you to, which says that

O71nsi t h

1 some or all of the participants included in the situational
2 network may have no prior knowledge of or connection or contact
3 with each other or other participants of the situational
4 network through any other type of social network.

5 MR. KANNAN: So, your Honor, I think that that
6 language is that you could have users that are members of
7 Facebook that don't know each other or on any other social
8 media platform that have no interaction with each other prior
9 to the formation of the situational network.

10 THE COURT: Okay.

11 How do you apply your definition in the context of the
12 peer-to-peer example, just so I am clear about that?

13 MR. KANNAN: So in the specification, there are
14 peer-to-peer examples and centralized examples. In the
15 peer-to-peer examples, the peers are communicating directly to
16 one another after the establishment of a situational network,
17 so they have some networking capability to one another. Now
18 that they know they have been joined together on a situational
19 network, they are able to send messaging to each other.

20 I don't think I'm answering your question, but --

21 THE COURT: No. I am just wondering how you reconcile
22 that example with your proposed construction, which is a
23 network that is a subset of a larger network.

24 Is it your contention that everyone's just part of a
25 larger network if they have any kind of device?

O71nsi t h

1 So if they are connected through this situational
2 network, then it is a subset of a larger network, because you
3 and I with our smart phones are in some way, shape, or form --
4 it's like N degrees of Kevin Bacon. I could eventually get to
5 you through some manner or means if I have some sort of
6 internet connection.

7 So when a situational network is created that includes
8 you and I, then that is necessarily a subset of a larger
9 network?

10 Is that what you are saying?

11 MR. KANNAN: That might be true, but that wasn't what
12 I intended. What I was trying to point out is that all of the
13 members that might possibly be part of the situational network
14 are part of this social network, which the specification uses
15 the language of N-dimensional personal information network I
16 believe.

17 So all of those members, in addition to being part of
18 an internet or ethernet or other low-level networking, they are
19 also part of a social network, whether it be Facebook or
20 LinkedIn or Instagram or some other type of social network.

21 It is just that from a social network standpoint they
22 are not connected to one another yet prior to the formation the
23 situational network. They might both have accounts on
24 Facebook, but they don't necessarily communicate or have any
25 friends in common or any parameters in common.

O71nsi t h

1 THE COURT: Okay. Understood.

2 Let's switch to member nodes, and then I will give
3 Meta a chance to respond.

4 Member nodes, is that a term that's used in any of
5 these patents?

6 MR. KANNAN: Yes. The specification talks about the
7 nodes.

8 THE COURT: But member nodes. Let me just put it this
9 way. Member nodes is not a term like event node that is used
10 in any of these patents, correct?

11 MR. KANNAN: Right. That's correct.

12 THE COURT: All right. And you are not seeking any
13 construction of the term node, right?

14 MR. KANNAN: No. We are not.

15 THE COURT: Okay. Because there is some discussion in
16 the specification about what a node could contain, what
17 information it could convey. I will hear from Meta on this,
18 but I don't think anyone is seeking a construction of node.
19 That is a term that is well understood in the art.

20 MR. KANNAN: Other than event node, which has the word
21 node in it.

22 THE COURT: Sure. But that's the event part of it.
23 That's either the event part of it or the combination of event
24 or node. Nobody thinks that node itself needs a definition.

25 MR. KANNAN: This is correct. The term member is just

O71nsi t h

1 trying to indicate that it is a member of the situational
2 network, and that term was chosen for clarity. We are not
3 wedded to that term member.

4 THE COURT: So in terms of nodes, again, how does that
5 work in the context of peer-to-peer architecture?

6 Each of the participants in the social network that's
7 created through peer-to-peer architecture would constitute a
8 node?

9 MR. KANNAN: That's correct.

10 THE COURT: All right. How do you square the
11 inclusion of the node requirement or the member node
12 requirement with language in a patent that seems to suggest
13 that the concept of nodes comes up again in the NDSN
14 embodiment?

15 I will direct you to, I think it's column 7. I am
16 looking at the '345, but I think all the patents here share the
17 specification. So it's on column 7, line 37. So in one
18 embodiment the situational network may be established using the
19 framework of an N-dimensional social network, also referred to
20 as a multidimensional personal information network.

21 Let me try to get to the language on nodes.

22 Well, maybe this is easier.

23 Do you have the '345 patent in front of you?

24 MR. KANNAN: Yes, your Honor.

25 THE COURT: So if you look, for instance, at column

O71nsi t h

1 20, line 22, within the framework of the NDSN, the event or
2 situation becomes associated with a node of the NDSN, referred
3 to as an event node.

4 So there are nodes referenced in a lot of the
5 specification when it's talking about this centralized
6 architecture version of the situational network. I don't see
7 those references when there is discussion of the peer-to peer
8 example.

9 Is that something that the Court should take into
10 account, or is it not really an issue, because given the way
11 the parties are talking about nodes, it's going to come up
12 regardless of how the situational network is formed?

13 MR. KANNAN: I think it's the latter, your Honor.

14 I think another reference, which I will try to find it
15 in the '345 patent, so that I can keep you on that patent. At
16 line 26 of the column 15 of the '345 patent it kind of explains
17 what nodes do, and it says each node is capable of
18 communicating in a peer-to-peer fashion.

19 THE COURT: Sorry.

20 Can you give me that reference again.

21 MR. KANNAN: Sorry, your Honor. It's column 15, line
22 26 of the '345 patent.

23 Starting where I just directed you, it's talking about
24 the node that's explained in the previous paragraph, but it
25 says each node is capable of communicating in a peer-to-peer

O71nsi t h

1 fashion with other nodes in the NDSN.

2 THE COURT: Right.

3 But isn't this talking about a specific embodiment as
4 reflected in the prior paragraph, in one embodiment the NDSN
5 comprises interconnected nodes?

6 MR. KANNAN: I mean, that is true that it states that.
7 I don't think that the node part of it is different. I think
8 the node part is common to all of the connections, whether it's
9 peer-to-peer or centralized.

10 THE COURT: Okay. Understood.

11 Let's hear from Meta. Then I will certainly give you
12 a chance to respond.

13 MR. KANNAN: Thank you.

14 MS. BI: Your Honor, I think the core of the parties'
15 dispute here is whether this term is limited to a single NDSN
16 embodiment in the specification.

17 Just responding briefly to what my colleague
18 mentioned, starting with computer network 900, while computer
19 network 900 appears in a number of embodiments, it's quite
20 different from an NDSN.

21 The patent describes computer network 900 as an
22 ethernet or the internet. It is a communications medium. That
23 is not the limitation SitNet is trying to read into the claim
24 here. What they're trying to accomplish with this construction
25 is evident in the joint brief on page 7. It states that they

O71nsi t h

1 believe a situational network is a subset of a broader personal
2 information network or an online social network and that a
3 situational network requires an event node.

4 It is clear in the specification that the term is not
5 limited in that way. There is no lexicography. There are no
6 words of manifest exclusion or restriction.

7 In fact, it's quite the opposite. Looking at the '454
8 patent, for example, at column 7, line 23, it states that those
9 skilled in the art would recognize that any of the available
10 architectures in the specification -- so that includes the
11 centralized, the peer-to-peer, and the combination
12 architecture.

13 Let me just pull up that up on the screen.

14 "Could be used to form and sustain the various
15 embodiments of the situational network that are described in
16 the specification."

17 What this language is saying is that all of the
18 embodiments in the specification are embodiments of a
19 situational network, and therefore it is not a term that's
20 restricted to just the NDSN embodiments or the social
21 networking embodiments.

22 THE COURT: Can you give me an example of a network
23 that would not be a subset of a larger network?

24 I think SitNet's contention here is that, any way you
25 slice it, anytime you have the situational network it is going

O71nsi t h

1 to be a subset of a larger network. That's just how the world
2 works.

3 MS. BI: Sure, your Honor.

4 So the patent actually compares and contrasts an
5 NDSN-based embodiment with the centralized embodiment. That is
6 not a subset of a larger network.

7 The '454 patent, column 31, lines 30 to 57, gives that
8 description. So it talks about users who are interested in the
9 same weather event being connected by a situational network.
10 So first it describes a centralized embodiment in which a
11 website is set up where users can connect specifically to talk
12 to each other and communicate about the weather event. That is
13 a new situational network that is for the weather event. The
14 network is the situational network, and there is no larger
15 social network there.

16 And then later on in the paragraph, starting around
17 line 46, there is a description of the possibility of an event
18 node server creating an event node in an NDSN and creating a
19 situational network that way.

20 The paragraph includes that the SitNet established in
21 the NDSN could be used to share information similar to that
22 obtained on the website discussed above, but the information is
23 shared in a peer-to-peer manner instead of controlled by a
24 centralized source. So it's comparing and contrasting those
25 two possibilities of a social network set up specifically for a

O71n s i t h

1 situation and creating a situational network within a larger
2 social network.

3 THE COURT: Okay. What about the inclusion of a
4 reference to member nodes?

5 Do you dispute that in any version of the situational
6 network there are going to be nodes?

7 MS. BI: Nodes are only referenced in the
8 specification I believe with respect to the NDSN embodiment.
9 So we don't agree with importing that language here. The
10 situational network is not limited to any one structure. I
11 think that language implies the existence of a larger social
12 network with nodes.

13 THE COURT: Well, even in a peer-to-peer, pure
14 peer-to-peer example aren't the peers nodes, right? The
15 parties are not trying to affix some specific meaning to node.

16 There are cases out there that would say in the
17 context of a pager network node might be a specific reference
18 to pager. That is not what the parties are doing here. I
19 think they are in agreement that a node can be an entity, it
20 can be a particular device, it can be anything. It is just a
21 node.

22 It represents one of the segments on the network,
23 right?

24 MS. BI: That's right.

25 THE COURT: Anytime you have a situational network,

O71nsi t h

1 it's going to have nodes, right?

2 MS. BI: It will have users or servers or
3 participants. That's how the patent refers to them. I think
4 using the word nodes with that understanding is fine.

5 THE COURT: So you don't really have an issue with the
6 member nodes part of SitNet's construction?

7 It's really the subset of the larger network piece?

8 MS. BI: That's right.

9 THE COURT: All right. Understood. Thank you.

10 We will give SitNet just a brief chance to respond,
11 and then we will move on.

12 MR. KANNAN: Thank you, your Honor.

13 So the example that my colleague gave at column 31 of
14 the '454 patent, where she contrasted or attempted to contrast
15 between two different types of SitNets, even the first example,
16 which said users interested in the same weather event may be
17 connected in a situational network, two sentences later it says
18 other users can be connected to the same social network from
19 different links on different websites also displaying
20 information.

21 So even that example contemplates that there are users
22 on the situational network and then there's other users who are
23 not yet on the situational network. So we believe that
24 confirms that whether it is a centralized or decentralized or
25 an NDSN or non-NDSN example, in all of these examples there is

O71nsi t h

1 the concept of users that are members and users that are not
2 members, which suggests that the users that are members are a
3 subset.

4 THE COURT: Okay. Take a look at figure 44 and
5 explain to me how in this figure, which is I believe a
6 representation of the situational network, there is a subset of
7 a larger network represented here.

8 MR. KANNAN: So, your Honor, in this figure, which is
9 trying to talk about a specific topic -- let me turn to that.
10 It doesn't necessarily show the entirety of everything else
11 that is going on in the network.

12 For example, the specification says that figure 44 is
13 a network diagram of an alternate embodiment of a SitNet. And
14 then it states -- I am having trouble finding it exactly, but
15 what I just -- in the interest of time, the issue is that I
16 don't think anybody reading this specification would think that
17 the entire network is the one, two, three devices and that's
18 it. This is just given as an example of how they are
19 connected, these particular devices relate to one another.

20 THE COURT: Okay. Understood.

21 If I were to reject your proposed limitations here,
22 would you prefer Meta's construction of this term or,
23 alternatively, something simpler, such as a network formed in
24 response to an event or situation?

25 My main grievance with Meta's proposed construction is

O71nsi t h

1 that it's like six lines long, which I don't think is helpful
2 for a jury trying to understand what seems to be a fairly
3 simple term.

4 I understand the additional limitations that you
5 believe are required, but if we were not to accept those, are
6 you comfortable with Meta's construction or would something
7 simpler make sense, such as a network formed in response to an
8 event or situation?

9 MR. KANNAN: We would prefer the latter, but obviously
10 we would prefer in general the proposed construction.

11 THE COURT: Okay. But there is no issue with a
12 network formed in response to an event or situation aside from
13 the additional limitations that you would like to add?

14 MR. KANNAN: Yes, your Honor.

15 THE COURT: Meta, any issues with that alternative
16 construction?

17 MS. BI: Meta has no concerns about that alternative.

18 THE COURT: Okay. Thank you very much.

19 Let's move to situation authority. Maybe just to be
20 fair I will let Meta take the first crack on this.

21 MS. BI: Your Honor, this term raises a similar issue
22 to the one we have with situational network, which is that
23 SitNet is attempting to limit the scope of this claim term
24 beyond its plain and ordinary meaning.

25 The specification is clear that what a situation

O71nsi t h

1 authority is, is a trusted provider. It defines a situation
2 authority by the type of entity that it is, not by its specific
3 role in a situational network.

4 In particular, a situation authority is not
5 necessarily definitionally an entity operating a server with
6 one or more event nodes. That raises the same problem as
7 SitNet's construction of situational network, where it attempts
8 to limit situation authority to the role it plays in one
9 particular embodiment, the NDSN embodiments in the
10 specification. But the patents describe other roles that a
11 situation authority might play in alternative embodiments.

12 THE COURT: Is there any example you can give me of a
13 reference to the situation authority that does not include
14 either a server or an event node?

15 MS. BI: Yes, your Honor.

16 THE COURT: Just to give you a backdrop, I do believe
17 there are examples of the network that do not include a
18 situation authority at all. But I guess my question for you is
19 are there any that include the situation authority but no
20 server or no event node?

21 MS. BI: Yes, your Honor. So I point you to column 6,
22 line 58 of the '454 patent. It states, "In one embodiment a
23 situation authority acts as a participant in a peer-to-peer
24 network. While the situation authority may act as an important
25 source of information, it does not act as a central authority

O71nsi t h

1 or host as would be found in the centralized architecture
2 described above."

3 THE COURT: So maybe connect the dots a little bit in
4 figure 44, which I have previously referred to. You could have
5 an example like that, where one of those devices that was on
6 that network was functioning as the situation authority and in
7 that example there would be no server that would be associated
8 with the situation authority?

9 MS. BI: That's right. And there would be no event
10 node potentially.

11 THE COURT: All right. You have been talking about
12 not limiting these terms to particular examples. I mean, to be
13 fair, aren't the proposed limitations on your end -- trusted
14 provider, aggregates, and provides comprehensive information --
15 aren't those additions that, while those terms are referenced
16 in various places in the specification, it doesn't necessarily
17 need that, right?

18 A situation authority provides information. That's
19 the basic thing. You pointed me to the language just now which
20 seems to indicate that there's flexibility in what the
21 situation authority is or does. The main thing is they provide
22 information concerning the event.

23 Is that fair?

24 MS. BI: Yes. Our key concern here is about limiting
25 situation authority to an entity that operates a server and

071nsi t h

1 creates event nodes. Beyond that, we don't have a concern with
2 not defining it specifically as a trusted provider.

3 THE COURT: All right.

4 So let's turn to SitNet, and let's talk about that.

5 MR. KANNAN: Okay. Just to dive into figure 44, your
6 Honor, the specification states that in one embodiment the
7 SitNet can be formed in the absence of an event node, such as
8 in a decentralized architecture.

9 But there the only embodiment that doesn't have at
10 least one event node also doesn't have a situation authority.
11 So this embodiment lacks a situation authority and it lacks an
12 event node. The claims require a situation authority, and a
13 situation authority isn't just any old person.

14 The specification also says, the '454 patent at column
15 4 lines 6 through 22, that in the context of the situational
16 network 3000 the participants may include external entities
17 207, called situation authorities. There is a corresponding
18 situation authority server 3011, also referred to as an event
19 node server for each situation authority 207.

20 So we believe that the specification shows that
21 whenever you have a situation authority, you have a situation
22 authority server, also known as an event node server. So we
23 don't agree that figure 44 allows for a situation authority at
24 all.

25 THE COURT: What about the example given of an

O71n s i t h

1 embodiment in which the situation authority acts as a
2 participant in the peer-to-peer network?

3 And while the situation authority may act as an
4 important source of information, it does not act as the central
5 authority or host, as would be found in the centralized
6 architecture described above.

7 MR. KANNAN: We believe that is related to a network
8 architecture issue. So in such a case the situation authority
9 or the patent node server might be located both on the
10 situation network and located on the N-dimensional social
11 network at the same time. So in such a case it's the
12 participant, after forming the situational network, it becomes
13 a member of the situational network.

14 THE COURT: Give me that one more time.

15 MR. KANNAN: Okay. So the situation authority -- so
16 as an example, and this will come up again when we get into the
17 event node term, the situation authority starts off and
18 develops the situational network in the claims.

19 The claim language that talks about forming by an
20 event node server, for example, a situational network. So the
21 situation authority and the event node server don't necessarily
22 exist -- or they do exist. I'm sorry. They do exist before
23 the situational network. As such they are part of the
24 N-dimensional social network.

25 Then the situational network is formed, and after the

071nsi t h

1 situational network is formed they can either be a participant
2 on the situational network 2 or they can stand apart from the
3 situational network.

4 THE COURT: So let's say that we have a peer-to-peer
5 network. It's you and me. We are on the network. And I want
6 to provide information concerning an event or occurrence.

7 If I am playing that role in our situational network,
8 then I would be the situation authority, right?

9 I would fit that definition of providing information
10 concerning an event or occurrence, right?

11 MR. KANNAN: That's correct.

12 THE COURT: But I don't have a server. I mean, I am
13 just connecting through the normal peer-to-peer channels that
14 are available.

15 MR. KANNAN: So what I would say, your Honor, is that
16 an event node server -- a server is very general. That is not
17 a term we have been debating here, but a server is a computer.

18 When we discuss the term event node, we will talk
19 about how the event node is a software running on that
20 computer. From the standpoint that a server is computer that
21 serves to others, I think the language in peer-to-peer
22 technology might say that the peers are serving to each other.

23 In that case I don't think -- the term server is not
24 meant to mean some type of official computer running anywhere
25 at least no one here is disputing what the term server means.

O71nsi t h

1 I would say in that example that computer is acting with a
2 software package running both as a server and as a client.

3 THE COURT: This seems to be the second iteration of
4 something that we ran into with the situational network term,
5 which is that it is just going to be true that in any case
6 where you have a situational network you are going to have, if
7 you have a situation authority, a server and an event node.
8 Because you can't even participate in the network without
9 having a computer or device of some kind, and it's going to be
10 running some kind of software.

11 If that is true, then you've got a server and you've
12 got an event node. We explored this on the last example, which
13 is everyone's eventually connected through some sort of larger
14 network so that's why that would be an appropriate limitation.

15 Am I missing something here?

16 That's the contention here, is that in any version of
17 the situational network where you have connections between
18 devices, then you are going to have a server and you are going
19 to have an event node.

20 MR. KANNAN: That's true.

21 THE COURT: Software running on a computer.

22 MR. KANNAN: This is true. And the specification
23 states that a situation authority, there's always a
24 corresponding situation authority server.

25 THE COURT: You would agree that you don't need to

071nsi t h

1 have an event node in every -- how does that work if this
2 patent makes very clear that you do not need an event node for
3 every situational network?

4 MR. KANNAN: But in that example there isn't a
5 situation authority.

6 THE COURT: Okay. But is there a code running on a
7 computer?

8 MR. KANNAN: I mean, there would be code running on a
9 computer.

10 THE COURT: How wouldn't you have an event node given
11 the breadth of your proposed construction of that term?

12 If you are right, that anytime you have a computer and
13 anytime you have code running on that computer you would have
14 both a server and a event node, how do you square that with
15 language that, for instance, in one embodiment the SitNet can
16 be formed in the absence of an event node such as in a
17 decentralized peer-to-peer architecture?

18 MR. KANNAN: So those are all options of how it could
19 be formed.

20 THE COURT: You just said that event node is just code
21 running on a computer, right?

22 MR. KANNAN: Right. But it is a special type of code
23 that actually provides information about the situation to the
24 others.

25 THE COURT: Okay.

O71nsi t h

Meta, briefly if you want to respond. Thank you.

MS. BI: A situational network is simply not limited to a network that forms with an event node.

I think your Honor hit the nail on the head in citing column 7, lines 61 to 64 of the '454 patent. In one embodiment the SitNet can be formed in the absence of an event node. That is the peer-to-peer embodiment.

and the language I cited before in column 6 at lines 58 to 62 states that the situation authority can participate in a peer-to-peer network. So it's clear that a situation authority can participate in a situational network without creating an event node.

THE COURT: Right.

What I think counsel is suggesting is that you may have some versions of the sent without a situation authority whatsoever, but if you have a situation authority then that situation authority is going to be operating through a device which constitutes the server, and on that server is going to be running software, so you would call it an event node.

Correct me if I am wrong, but there is no explicit language in the specification that indicates that you could have a situation with a situation authority that does not have a server or an event node.

It is not that specific, right?

MS. BI: The specification, I mean it does state that

O71nsi t h

1 a situation authority --

2 THE COURT: It says you may have a version of it that
3 does not have an event node.

4 MS. BI: Correct.

5 THE COURT: And you may have a version of it where the
6 situation authority is a participant in the network.

7 Is there any other language that you would focus me on
8 that would suggest that you may have a situation where you have
9 a situation authority but you do not have either a server or an
10 event node in that example where there is a situation
11 authority?

12 MS. BI: Well, an event node is not defined in the way
13 my colleague has described, as software that's running that
14 creates -- that has some special function.

15 So certainly if you have a situation authority
16 participating in the network, you have a device. Whether that
17 device creates an event node I am not sure. I think that the
18 device itself would be a node, and as described in column 6,
19 the situation authority could be a user. So it's not
20 necessarily operating the server.

21 There are other embodiments as well besides the
22 peer-to-peer in which the situation authority doesn't create an
23 end code in a broader network. One example is the language in
24 column 31 I pointed you to with respect to situational network.

25 But it is also described at column 6. Beginning at

O71nsi t h

1 line 28, it describes the centralized architecture embodiment
2 in which the situation authority operates a server but the
3 server is actually hosting the network. So it is not creating
4 an event node in an existing social network or NDSN. It's
5 actually hosting the network, for example, by creating a
6 website that users connected to.

7 The event node language is used consistently in the
8 context of the NDSN embodiments, where there is an existing
9 network and a new node is created that corresponds to the
10 event, not necessarily to the situation

11 authority. So there is a possibility that a situation
12 authority could be a node on the network, and then an event
13 node is created as well. There is just not the level of
14 specificity that my colleague has described.

15 THE COURT: Right.

16 But your proposed construction of event node is a node
17 on a situational network corresponding to an event or
18 situation.

19 So with that kind of broad definition, wouldn't it
20 always apply?

21 If someone is functioning as a situation authority and
22 they are on the network, wouldn't their device constitute an
23 event node?

24 MR. KANNAN: Not necessarily, your Honor, because the
25 situation authority, again, could be a node or a user on the

071nsi t h

1 network. The event node is an event corresponding to the
2 situation.

3 So, for example, an example of a situation authority
4 in the spec is CNN or the Weather Channel. What's described in
5 the specification is that CNN or the Weather Channel creates an
6 event node in an NDSN that corresponds to the situation. So it
7 would be a node that's for the situation specifically. It is
8 not like CNN is the event node.

9 So I would disagree that the node that corresponds to
10 a situation authority is an event node.

11 THE COURT: What you just said, how does that square
12 with Meta's proposed construction of event node, which is a
13 node on a situational network corresponding to an event or
14 situation?

15 It seem like once you have a situation authority who's
16 providing information concerning an event or occurrence and
17 they are on the network, then their device would be an event
18 node, or could arguably an event node based on your proposed
19 construction of event node.

20 I mean, tell me how I'm missing -- I may be missing
21 something. It's just because both parties have taken broad
22 views of what an event node would be, I think that SitNet's
23 contention is that's always going to be satisfied if you have a
24 situation authority.

25 I think you have a separate argument about server,

O71n s i t h

1 right? I think you have a stronger argument there, because
2 there are literally examples of the situational network that
3 does not have a server that is identified, and you have some
4 other figures that specifically referred to a server.

5 So you would have to have a broad construction of
6 server that would just constitute any participant or user on a
7 situational network, which the parties have not proposed. I
8 don't think anyone has taken that position here.

9 MS. BI: So we don't disagree that a situation
10 authority could create an event node and operate a device that
11 acts as sort of an event node in a situational network. Our
12 argument is simply that a situation authority has lots of other
13 roles in other embodiments and that the event node embodiment
14 pertains to just one embodiment in the specification, the NDSN
15 embodiment.

16 THE COURT: Okay. Understood.

17 Counsel for SitNet, let me ask one additional
18 question, which is a situation authority, based on the language
19 that we looked at, that they can be a participant, you would
20 agree that if we have a situational network and it has a bunch
21 of users of the network, one of those users could be the
22 situation authority, right?

23 MR. KANNAN: I think that's correct, yes.

24 THE COURT: While you are up, we can move to the next
25 term, projection of a situational network.

O71nsi t h

1 I guess the first question is one that's raised by
2 Meta, which is that the projection of a situational network
3 uses a different definition of situational network than the
4 definition of situational network that you previously have
5 suggested.

6 So maybe you can help us understand why there is a
7 different nomenclature used for this term than for the basic
8 situational network term.

9 MR. KANNAN: Right.

10 So that is -- I mean, that is a valid question. You
11 know, I think that really what we are trying to get here is as
12 to what is it a subset of. And I think that's really the
13 disagreement to focus on.

14 The question is, is it a subset of a personal
15 information network or is it a subset of a situational network
16 as Meta proposes?

17 We think that if you look at the claim language we
18 think that kind of resolves the dispute as to what it's a
19 subset of. We do agree that it should be construed
20 consistently to the extent that the word situational network
21 kind of appears implicitly in the construction of projection,
22 that it should -- it should be consistent with whatever the
23 court construes situational network as.

24 So if I look at claim 1 of the '454 patent, you know,
25 I see that step B says forming a projection of nodes of the

071nsi t h

1 situational network using geographic locations, a plurality of
2 devices corresponding to nodes in the multidimensional personal
3 information network.

4 THE COURT: Both parties are proposing definitions of
5 situational network. Here the question is, what does a
6 projection of that network mean?

7 And it seems like both sides agree that it is a
8 subset. That is in both parties' proposed constructions.

9 Why isn't that enough.

10 It is a subset. If it's used in connection with
11 something other than a situational network, then it would be a
12 subset of the nodes of that network. But in this particular
13 example, for instance, it says projection of nodes of the
14 situational network. It is a subset of nodes, which you agree,
15 right?

16 I think that is an explicit definition in the patent,
17 which is that a projected view means a subset of the nodes.
18 Then it is a question of what it is a subset of.

19 I am saying we just talked about what situational
20 network should be defined to mean, and the Court will resolve
21 that disagreement. But whatever that is, why are we layering
22 on another definition that talks about what the network would
23 be?

24 We are not going to do that, because if you just think
25 about how it would be presented to the jury, it would be a

O71nsi t h

1 projection of nodes and then it would be the definition you've
2 proposed, which is one definition. We would have to then layer
3 on the definition of situational network. So that would be a
4 separate definition that would potentially conflict with the
5 initial definition that we are giving of projection. Really it
6 is just a subset.

7 So, both sides, you agree it is a subset, right?

8 MR. KANNAN: Yes, your Honor.

9 THE COURT: Meta, any issues?

10 I don't know who's handling this term from your side.

11 MS. BI: No.

12 THE COURT: It is a subset, right?

13 MS. BI: It is a subset, yes.

14 THE COURT: Is there anything more complicated than
15 that?

16 That's what it is, right?

17 MR. KANNAN: If I may just add one nuance to this, if
18 you look at the claim language, the claim language has in the
19 preamble a method of creating a projection of a situational
20 network.

21 And then the claim itself says, step B, forming a
22 projection of nodes of the situational network using geographic
23 locations of a plurality of devices corresponding to nodes in
24 the multidimensional personal information network.

25 THE COURT: Sure.

O71nsi t h

MR. KANNAN: So that suggests that --

THE COURT: So if it's in the claim, why would we add it to the definition of one of the terms that's mentioned in that exact claim element?

I mean, it's there. It can be something different, because obviously the claims need not cover the entire breadth of the patent, right? So you may have other patent claims, maybe that aren't asserted in this litigation, in which the projection of nodes would be in something other than a personal information network, and the claims tell us in which context these terms are applied.

Here, as you point out, you shouldn't have an issue, because this claim term is telling us exactly what the projection corresponds to in terms of nodes of this personal information network. So that should be enough for you.

It's unclear to me why would you want projection of nodes to carry a more comprehensive definition that would then lead to redundancy in terms of how the claim element would read and also a potential conflict with the definition of situational network that you've proposed.

MR. KANNAN: We understand that.

Thank you, your Honor.

THE COURT: Okay.

Any further issues from Meta's side on this particular term?

071nsi t h

1 MS. BI: No, your Honor.

2 THE COURT: All right.

3 Then let's go to event node, which we have already
4 covered a little bit. As we have discussed, neither side has
5 or proposes a construction of node. So the question is why we
6 would need a construction of event.

7 So I'll let SitNet start here. I think that's where
8 we are at.

9 MR. KANNAN: Thank you, your Honor.

10 So in terms of event node, SitNet's proposed
11 construction is a node on a personal information network
12 corresponding to an event or situation.

13 And Meta's proposed construction is a node on a
14 situational network.

15 So the disagreement here is what the node is on. Is
16 it on the situational network, which is according to Meta; or
17 if it is on a personal information network, which we argue.
18 And defendants acknowledge in their briefing that, for example,
19 that there may be simultaneously nodes on both networks.

20 THE COURT: Is there any example you have in the
21 patents of an event node that is not on a situational network?

22 MR. KANNAN: I think that from a logical standpoint,
23 when you read the claims and when you look at the specification
24 about how a situational network is formed by an event node
25 server. So the event node is the software.

071nsi t h

1 THE COURT: I take it that there is no reference to an
2 event node that is not on a situational network?

3 You are saying that the claim terms may show you
4 something else, but there's nothing in the specification that
5 indicates that you can have an event node independent of a
6 situational network?

7 MR. KANNAN: It tells us, your Honor, that the event
8 node is used to form the situational network. So from a
9 logical standpoint if the situational network has yet to be
10 formed and the first step is, for example, an event node server
11 is initiated because a hurricane is coming, then one would
12 expect that the situational network might not exist yet.

13 So we are concerned about this because we feel that
14 this could be, you know, a noninfringement argument that, well,
15 the event node when it was doing the formation of a situational
16 network the situational network didn't exist yet. Therefore,
17 there's no way of infringing that.

18 I agree that after the formation of the network it
19 could be or would be part of that situational network.

20 THE COURT: Do you have an issue with this term
21 bearing no construction from the Court? Meaning that nobody
22 wants node to be construed, I don't think anyone wants event to
23 be construed. Event node seems like it would be pretty
24 straightforward for a jury to understand.

25 I appreciate, based what you just said, why you resist

O71nsi t h

1 Meta's proposed construction, but I take it you would have no
2 issue if this just didn't have a construction.

3 MR. KANNAN: That's correct, your Honor.

4 THE COURT: Okay.

5 Let me turn to Meta.

6 Anyone new?

7 MS. BI: No, your Honor.

8 THE COURT: You are doing great. You're doing
9 fantastic. I just want to make sure that I am not missing
10 anyone who would like to speak.

11 What about the example that counsel gave, which is
12 fair, that you might have an event node and then subsequently a
13 situational network is formed?

14 So at the time prior to the creation of the
15 situational network the event node is not, at least at that
16 time, on the situational network.

17 Really why do we need a construction of this if not to
18 serve on undisclosed noninfringement position from Meta?

19 MS. BI: Meta has no concern with offering no
20 construction of this term.

21 THE COURT: Fair enough.

22 While we are on the subject, we might as well raise
23 it, is there a discovery issue that just hasn't been presented
24 to the Court concerning responses on noninfringement positions
25 from Meta?

071nsi t h

1 I guess this is a more fair question for counsel for
2 SitNet.

3 Is there a position there that we need to get into
4 here?

5 MR. NASH: Your Honor, Doug Nash. I don't think there
6 is at this point. As the briefing indicates, we were
7 complaining I guess is the way to fairly describe it.

8 THE COURT: I hear that a lot. It's fine.

9 MR. NASH: It happens, but we are trying to be
10 judicious to about the things we bring to your Honor's
11 attention.

12 Since the joint briefing got submitted, we have
13 started to get their noninfringement positions. I think we're
14 working our way through that, which is I think sort of how the
15 process is supposed to work anyway, without bothering your
16 Honor.

17 THE COURT: All right. Thank you very much.

18 Let's go to roll call information.

19 MR. GRIBAKOV JAFFE: Good afternoon, your Honor.

20 May it please the Court, Andrei Gribakov Jaffe, on
21 behalf of Meta Platforms Inc.

22 So the dispute here between the parties really boils
23 down to the meaning of information. Because we have the same
24 descriptor roll call modifying different nouns in claim 1.

25 Without an antecedent basis, a person skilled in the

071nsi t h

1 art is left wondering which roll call information should be
2 provided in an electronic message board, established in claim
3 5.

4 So, under *Nautilus*, where multiple known approaches
5 exist, the person having ordinary skill in the art would have
6 to know which approach to pick.

7 And the intrinsic evidence here, which is the claim
8 language in the specification, supports at least two different
9 categorical constructions of the term, and there's no
10 reasonable certainty as to which approach to select.

11 So roll call information could be referring to the
12 role call list in claim 1, or it could be referring to the roll
13 call query, which encompasses all participants in the network,
14 both responsive and nonresponsive, or it could be referring to
15 a completely different set of information.

16 And the claim language does not provide certainty,
17 because here the patentee knew when to use the term roll call
18 list, as shown by dependent claim 2, which refers to the roll
19 call list in claim 1. But claim 5 does not use this term and
20 different claim terms are presumed to have different meanings.

21 Similarly, the specification does not provide
22 reasonable certainty. The specification at 27:3 through 27:5
23 advertise discloses an embodiment as shown by figure 32, which
24 allows someone to see a list of nonresponsive participants as
25 well as a list of those that need assistance, both different

O71nsi t h

1 types of categories of information.

2 So this case is just like *Teva* and the subsequent
3 Federal Circuit cases relying on *Teva*, which hold when there
4 are multiple categorical approaches and no reasonable certainty
5 as to which one to pick, the claim is indefinite.

6 I welcome the Court's questions.

7 THE COURT: Well, I mean, if we thought about just
8 from a real-world perspective what the roll call information
9 would be, I mean, how is it not the status responses of the
10 people who are queried or I guess, taking all the status
11 responses together, the role call list?

12 How is it not one of those?

13 Just think about the claim. What it's trying to say
14 is, you go out, try to figure out where people connected to
15 this incident are and whether they're okay.

16 That is one example, right?

17 And then all of that information is aggregated onto a
18 message board. And you want people who are not near there to
19 know that their friends and family are safe, so they go look at
20 this message board. And what they would be looking for are the
21 responses from the people who are queried.

22 I guess I am not seeing where the roll call
23 information might be something totally different, for instance,
24 the query information divorced from the status responses of the
25 participants.

O71nsi t h

1 I suppose the status response from the participant
2 might include the roll call query:

3 "Are you okay?"

4 "Yes."

5 If you just had the "yes" and you had no context for
6 what the "yes" was in response to, that would be an issue. But
7 on some level that is what it's trying to say. It's like,
8 look, look at this message board, and it is going to have this
9 information. It's going to be to the information from the
10 participants.

11 I'm phrasing this in this way to you because you would
12 agree that the burden on this question of indefiniteness is on
13 Meta, correct?

14 MR. GRIBAKOV JAFFE: That's correct.

15 THE COURT: You have to establish indefiniteness by
16 clear and convincing evidence.

17 Is that fair?

18 MR. GRIBAKOV JAFFE: That's correct.

19 THE COURT: Then the real question for me at this
20 point is that there's reasonable certainty concerning the
21 meaning of this term given the extrinsic record.

22 And there is no extrinsic evidence provided, so it's
23 just the intrinsic record?

24 MR. GRIBAKOV JAFFE: That's correct.

25 THE COURT: In light of all of that, isn't it

O71nsi t h

1 reasonably clear that what is being referred to are the status
2 responses I suppose is the most precise way to put it, made in
3 response to the roll call query?

4 MR. GRIBAKOV JAFFE: I mean, I think there's different
5 categories. As your Honor said, there could be a list of all
6 the participants, which is the roll call query.

7 The specification explains that that's determined
8 through stored lists, so the list could encompass all the
9 participants on the network, whereas the roll call list is just
10 the list of people who actually responded.

11 So in those instances those are two distinct
12 categories of information.

13 THE COURT: Yes. I don't think it's the roll call
14 list, by the way, which is what SitNet proposes. I don't think
15 that what's being referred to. I think it's the status
16 responses. And those could be individual status responses.
17 That could be a compilation of them.

18 But to give an example, if you were the friend of one
19 of the participants, and you want to go to the message board to
20 find that particular individual's information, then you are
21 looking for that individual's status response, which is what is
22 referred to in claim 1.

23 But putting that issue to the side, that's not why
24 you're saying it's indefinite, you are saying it's indefinite
25 because it could be referring to something totally different,

O71nsi t h

1 such as the roll call query itself, right?

2 MR. GRIBAKOV JAFFE: I think we're referring to what
3 is the actual information that is going to be shown on the
4 message board, right?

5 If you are looking for a response, the question here
6 could be, there is a list of participants and there could be a
7 lack of response in one list, or in the roll call list, what
8 the status of responses would be from the people who have
9 actually responded. But I don't think that the specification
10 or the claim language gives certainty as to which one to

11 pick. For example, in *Teva* there was three distinct
12 definitions of molecular weight, and it was clear that it was
13 one of those three definitions, specifications, but the Court
14 there still found it was indefinite because it just wasn't
15 clear which one the person of skill in the art should pick.

16 THE COURT: I will take another look at this, but what
17 is the other thing, other than the status responses, that you
18 think the intrinsic record points to or could point to as being
19 the roll call information?

20 MR. GRIBAKOV JAFFE: Sure, your Honor.

21 So in figure 32, it is also states that if you need
22 assistance you'll be prompted to enter additional information
23 below, which is a separate category of information from just
24 the status response.

25 And then, for example, also in figure 32, in

O71nsi t h

1 responding you are providing a list of nonresponsive
2 participants, which that button is a separate category from the
3 responses that we are talking about or that you were talking
4 about, your Honor.

5 THE COURT: How do you know that figure 32, for
6 instance, corresponds to claim 5, which depends from claim 1?

7 MR. GRIBAKOV JAFFE: So in column 27 the parties agree
8 the only specification that's relevant to this claim, both
9 parties have cited 27:3 through at least the end of 27. I
10 don't -- I think in figure 32 it is providing an additional
11 category of information, like a different list --

12 THE COURT: I am with you on column 27. So what
13 language would you point me to that indicates that the roll
14 call information would be something other than the status
15 responses?

16 MR. GRIBAKOV JAFFE: So I believe it would be -- I
17 apologize. One second.

18 So I believe this would be -- sorry, 27:14 to 15. I
19 think at 14, 15, it states, A user may also provide location
20 information to -- sorry, might also respond to the check-in
21 that they need assistance and provide location information to
22 emergency responders.

23 And I believe also, I think also it says in one
24 embodiment the most recent roll call list for the search
25 criteria entered by the visitor is available using the link on

O71nsi t h

1 the web page, which I believe refers to figure 33, which
2 provides a different type of information that you would find
3 and display as to when it's discussing a roll call list.

4 THE COURT: Okay. Understood.

5 I'll take a look at that. Thank you.

6 Response briefly from SitNet.

7 MR. HECHT: I will make this very brief.

8 So the claim refers to -- hit the next slide. Sorry.

9 Claim 1. Obviously claim 1 depends from claim --
10 sorry. Claim 5 depends from claim 1. Claim 5 is very clearly
11 referring back to information that is referred at the very end
12 of claim 1 aggregating the list of status responses.

13 So one thing I will present to the Court a little
14 differently is these are literally two sides of the same coin,
15 responsiveness and nonresponsiveness. A person of ordinary
16 skill whether it's, you know, I am sure the parties agree some
17 kind of computer science, computer engineering type person
18 would understand exactly that nonresponse means that the person
19 is missing or needs help, and response means that they're okay.

20 That's very easily derived. So whether they have
21 responded or not responded, we are talking about, you know,
22 sort of that confusion raised by Meta. I think it's very clear
23 from the claim, but it is also two sides of the same coin that
24 could be easily derived, as I think your Honor had pointed ut.

25 THE COURT: You are saying that whether there is

O71nsi t h

1 status, whatever the substance of the response is, either it's
2 there or it's not there, whatever the case, that's what it's
3 referring to, is the status response --

4 MR. HECHT: Yes.

5 THE COURT: -- that is referenced.

6 By the way, does SitNet have an issue whether it's
7 status response as opposed to roll call list?

8 The roll call list is just a compilation of the status
9 response.

10 MR. HECHT: Yeah. I think they're pretty much one and
11 the same, because that's where the antecedent basis is sort of,
12 you know, kind of linked, because the roll call information --
13 it just happened to be the draftsman referred to it as roll
14 call information instead of explicitly saying status response
15 or roll call list.

16 THE COURT: But there is no issue regardless of
17 whether it is status responses of the participants as opposed
18 to roll call list as referenced?

19 MR. HECHT: I don't think we do, no.

20 THE COURT: To address the argument that's been made
21 by counsel, you are just saying, look, whatever it is that
22 comes back, or if nothing comes back, equally that is the
23 response that was received from the participant or the
24 information about the individual, that's what the roll call
25 information is referring to?

O71nsi t h

1 MR. HECHT: Correct, your Honor.

2 That's how the list is derived.

3 THE COURT: All right.

4 Let's move to the next term, which is causing an
5 automatic redirection of a web browser application operating on
6 each of the devices.

7 MR. NORRIS: That will be with me, your Honor.

8 Treymaine Norris.

9 THE COURT: Let me ask you a more general question.

10 MR. NORRIS: Sure.

11 THE COURT: Is there actually a dispute between the
12 parties here?

13 MR. NORRIS: There shouldn't be, right?

14 It's very simple.

15 THE COURT: Sorry. What is your name?

16 MR. NORRIS: Treymaine Norris.

17 THE COURT: Mr. Norris. Who is Mr. Norris'
18 counterpart on the Meta side?

19 MR. RAMANI: That's me. Ashok Ramini, your Honor.

20 THE COURT: Okay. Mr. Ramani, is there actually a
21 dispute here? Because it seems like in the briefing maybe the
22 parties are on the same page, but maybe not. I am just missing
23 something.

24 MR. RAMANI: It might be that we are on the same page,
25 your Honor. I was going to start my argument by citing to the

O71nsi t h

1 reply brief from SitNet, where they say in pertinent part on
2 page 40, what matters for automatic redirection is that the
3 browser application initiates the redirection -- for my money
4 that's the key language -- and that the user does not instruct
5 the browser application where to go.

6 So, to break it down --

7 THE COURT: Stop there, because I was unfair to
8 Mr. Norris and allowed you a chance to interrupt.

9 Mr. Norris, why don't you take from it there.

10 So counsel points to some language from the brief on
11 page 40. That led me to my initial question, but I will let
12 you pick it up there.

13 MR. NORRIS: Yes. So user action should be allowed.
14 A user can, you know, click a link, can go to the home page,
15 and that can initiate the automatic redirection.

16 The system itself does the redirection. The user
17 doesn't have to think about what site to go to. They don't
18 have to manually input the URL address into the browser to go
19 there. That is the system.

20 But they do in fact have to do something or else the
21 system doesn't do anything. You have to at least go to the
22 website, go to the homepage, or in other examples they can
23 click a link.

24 So user action is necessary.

25 THE COURT: You are saying that's the causing part of

O71nsi t h

1 it. The causing can involve user input?

2 MR. NORRIS: Exactly.

3 THE COURT: You don't disagree that the redirection
4 has to be automatic.

5 MR. NORRIS: I don't disagree that the redirection has
6 to be automatic. No, I do not.

7 THE COURT: So, Mr. Ramani, maybe we don't have a
8 dispute there. Because you don't disagree that there's going
9 to be other user actions that may lead you to the point of the
10 automatic redirection.

11 I think the dispute that was raised by the parties'
12 initial constructions was maybe some potential dispute as to
13 whether the redirection itself might involve some user input.

14 You say no. Maybe you thought SitNet was going to say
15 yes, but it seems like they are saying no too.

16 MR. RAMANI: I still think we have a live dispute,
17 your Honor, based on something Mr. Norris said, which is that a
18 user clicking on a URL or a link does not constitute an
19 automatic redirection.

20 We agree with that. If he agrees and SitNet agrees
21 that a user clicking on a link does not constitute causing an
22 automatic redirection, then we have no dispute. I suspect
23 Mr. Norris is going to disagree with that proposition.

24 MR. NORRIS: Yes. 100 percent.

25 The support in the spec for this, figure 26.

O71nsi t h

1 THE COURT: This is presented in the '932.

2 Is that right?

3 MR. NORRIS: Correct.

4 Figure 26 is an example of this.

5 Where a user is interested in a forecasted snowstorm
6 and they go to web page 3070 of a weather website. And then
7 when viewing the weather event details page on this website,
8 they can click on the link and be connected to the centralized
9 social networking website relating to the weather event.

10 It's right there in black and white. A user can click
11 the link and then be automatically redirected to another site
12 that gives them more information about an event.

13 THE COURT: All right. That's fair enough.

14 Mr. Ramani, do you have a response to that specific
15 reference?

16 MR. RAMANI: I do, your Honor.

17 If we could keep SitNet's slide up for a moment.
18 What's missing here is any mention whatsoever of the pertinent
19 claim language, which is causing an automatic redirection.

20 Obviously, everybody would know, whether you are one
21 of skill in the art or even just a layperson, as of 2007 that
22 clicking on a link is going to take you to some other web page.

23 That's not what we are talking about here. What we
24 are talking about here is the very specific claim language that
25 was put in to overcome an amendment -- or a rejection, excuse

O71nsi t h

me.

So to actually focus your Honor on the pertinent language in the spec, we would have to go to column 24. It is on the screen, lines 49 to 65.

There's discussion here of broadcasting emergency information to users. This is the only place in the entire written description that the term automatic redirection appears.

What's notable about it is that it's described as one embodiment where the user's home page is automatically redirected to a website. The user does not do anything. It is the system that automatically redirects the user's home page.

It follows with common sense, because as the prior sentence explains, what's discussed here, the problem that's trying to be addressed is broadcasting emergency information.

So in one embodiment, if there is an emergency, you are not going to want to have a user to have to fumble around and try and click on something. Instead, the embodiment automatically redirects, that is, the system sends the user's web page where the system wants it to go.

There is a second mention here in the same passage about how emergency information can be directed to the user's cell phone, again broadcast. The user doesn't do anything. They get the information in an emergency.

The contrast is expressly described as an alternate

O71nsi t h

1 embodiment, where an event node -- the situation network is
2 established.

3 Finally, we have the user. The user is invited to
4 connect to that event node. the User accepts the invitation
5 and only subsequently do they start receiving updates.

6 So the applicant clearly distinguished automatic
7 redirection as something done by a system in an emergency,
8 which makes sense, involving the user, having the user interact
9 and sign up to spoke of information.

10 The second point, though, your Honor, as to why
11 clicking on something cannot constitute causing an automatic
12 redirection is seen by looking at the prosecution history.
13 There was a rejection during prosecution over two references,
14 Shamp and Hollenberg.

15 This is an embodiment of Hollenberg. It is figure 2.

16 I would like to just describe it for a moment. It's a
17 portable device. It has a touch screen. It has controls.

18 And I draw your Honor to figures 6a, d and e, which
19 are highlighted there. There is a accompanying language for
20 both of those figures -- excuse me all three of those figures.

21 So 6a is described as a symbol that can be mappable
22 hypertext, a link that can be clicked to provide more
23 information or execute computer code.

24 But even more pertinent to our discussion here is the
25 discussion of 6d, which is a banner that says fragrances, 6e

O71n s i t h

1 proximate merchandise banner, which is a describing a one-hour
2 special on a particular fragrance, \$33 for Petit Armure.

3 The disclosure in Hollenberg explains that, as you
4 would expect, those banner ads may also be mappable hypertext
5 items. And when taken in conjunction with the touch screen
6 what do we know? What Hollenberg teaches is that are these
7 advertisements, the user can click on them, and then the user
8 will go to another web page and get more information. And so
9 it was in response to this rejection that the language causing
10 an automatic redirection was added.

11 Now it's true in making that addition all that the
12 applicant explained was that Shamp and Hollenberg were silent.
13 So they didn't expressly admit and expressly disclaim claim
14 scope as one sometimes sees.

15 But it is apparent when one looks at the system that
16 was at issue in Hollenberg and why the language had to be added
17 to overcome the rejection, which subsequently led to on
18 allowance without subsequent rejection, so it was material.

19 THE COURT: Okay.

20 Mr. Norris, what is your response to that prosecution
21 history discussion?

22 I was going to ask whether there was some explicit
23 disclaimer of some kind. It doesn't seem like there is.

24 MR. NORRIS: No.

25 THE COURT: There is not. I understand the argument

071nsi t h

1 that to get around the reference there was at least some sort
2 of reference to the automatic redirection point.

3 MR. NORRIS: Right here in front of you, on the screen
4 in front of you is all that was said during prosecution, right?

5 All we have is the amendment itself that brought this
6 term into the independent claims with this lone statement that
7 both Shamp and Hollenberg, the prior art references, are
8 completely silent with respect to automatic redirection of a
9 web browser application.

10 That is it.

11 All this analysis that they showed you on the screen
12 is not here. They are trying to read into the mind of the
13 patentee at the time of prosecution. Nothing here says that a
14 users' action cannot be involved in the automated, automatic
15 redirection. It has to be clear and unmistakable disavowal,
16 not just this one little sentence here. It has to be clear and
17 unmistakable.

18 THE COURT: In Shamp and Hollenberg how would the
19 redirection have been anything other than automatic?

20 It is a fair point that this was the only statement
21 that was made, but if the only way that Shamp and Hollenberg
22 could have operated is with an automatic redirection and then
23 the patentee said, well, it doesn't have an automatic
24 redirection, that might be understood to suggest that you can't
25 have a user actually click a URL to trigger the automatic

O71nsi t h

1 redirection.

2 MR. NORRIS: From my understanding of the prior art,
3 the user knows where it's going to go.

4 Here, the user does not know where it's going to go.
5 The system takes that guesswork away from the user and
6 automatically redirects them to a website of its choice.

7 THE COURT: So is the difference kind of like, I get
8 an Amazon ad, take me to the listing for this item, I click on
9 it. That's not really an automatic redirection because I know
10 where I'm going. I am going to this Amazon ad.

11 MR. NORRIS: Correct.

12 THE COURT: Contrast that with this kind of situation,
13 where you might have someone send out a notification to users,
14 "Are you near this earthquake that just happened?"

15 You click, and then it takes you to the particular
16 website corresponding to the earthquake and the message board
17 or other information that you can use in connection with the
18 event.

19 Is that kind of what we are talking about?

20 MR. NORRIS: Yes. Exactly. It gives you additional
21 information. You can either click on something or there can be
22 an example where you just go to the home page.

23 That is an act. Going to the home page is an act by
24 the user, which will cause him to be redirected to, you know,
25 another web page.

O71nsi t h

1 It could be, you know, a crisis situation where time
2 is of the essence, and there is no time to wait for a user to
3 be -- you know, click on a link or something to that effect.
4 And the system can automatically redirect the user just by the
5 user going to a home page or any other page on that site.

6 THE COURT: Mr. Norris, can you give me again the
7 specification reference that you had started out with?

8 MR. NORRIS: Figure 26.

9 THE COURT: That's figure 26?

10 MR. NORRIS: Correct.

11 THE COURT: Okay.

12 MR. NORRIS: Column 27, line 64 to 66 in the spec,
13 which correspond to figure 46.

14 Just another point. Meta's approach has already been
15 determined and rejected by the Federal Circuit on multiple
16 occasions. We have the *CollegeNet* case, where the defendant
17 tried to construe automatically to mean a process that occurs
18 without human intervention.

19 The Fed. Circuit rejected this, and they gave a great
20 dishwasher analogy, saying that simply because a human can load
21 the dishwasher and press the start button doesn't mean that the
22 device doesn't work automatically to wash the dishes.

23 That's the same thing that we have going on here,
24 where just because the user clicks the link doesn't mean that
25 the system doesn't automatically redirect the user to another

O71nsi t h

1 site.

2 THE COURT: Okay. Then just technologically it is an
3 automatic redirection because the user clicks on the link and
4 then behind the link there is code that automatically redirects
5 the user to another site.

6 MR. NORRIS: Correct.

7 THE COURT: What's the distinction between that and
8 the normal way when we go on the internet we click on things
9 and it takes us to links?

10 Are those also automatic redirections?

11 MR. NORRIS: Yes. But with respect to the patent, you
12 know, this goes into our alternative construction with respect
13 to automatic redirection, is that a user plays no role in
14 knowing where it's going to be taken.

15 They don't think about it. You know, they don't weigh
16 in. They don't have to memorize the URL. They don't have to
17 manually type it. In the system takes care of that for them
18 and takes them to the place where they are going to get
19 additional information about this event.

20 THE COURT: Okay. Understood.

21 Mr. Ramani, any further words here?

22 MR. RAMANI: Yes, your Honor.

23 If I understood my colleague Mr. Norris correctly, I
24 believe he answered, when your Honor said if you are just out
25 on the web and you click on a link and you go somewhere, that's

O71nsi t h

1 an automatic redirection, he said yes.

2 That can't possibly be squared with what we see here
3 on Hollenberg. That is exactly what the Hollenberg system did.
4 There's no indication that any user clicking on Petit Armure or
5 fragrances would have any idea where it is they were going in
6 terms of the actual technical destination. All that they would
7 know is that they were going to colloquially get further
8 information about those topics. That can't be causing an
9 automatic redirection.

10 THE COURT: What is your test case that would find a
11 disavowal, though, when language in the alleged disavowal is
12 sort of vague, right?

13 It's not usually what we see. Usually we see, here
14 are the elements of the claim in the prior reference and here
15 is our language. We get over it because we do not require any
16 user input for the automatics redirection. You have seen it a
17 million times. I've seen it a million times.

18 Here, there is just this general reference to the
19 prior references being silent as to the particular term used in
20 the patent.

21 So how do you get from that? What's the standard?
22 What's the best case that says that can be grounds to adopt an
23 unnatural construction of a term if there is that kind of
24 evidence from the patentee?

25 MR. RAMANI: The standard, your Honor, is that it has

O71nsi t h

1 to be clear and unequivocal. It's not so much that it
2 necessarily has to be express or even explicit.

3 So I agree with your Honor, in this situation,
4 typically you would see what your Honor has described, which is
5 a more complete statement of disavowal.

6 Here we don't have that statement expressly, but here
7 what we do have is, when you actually go and you look the
8 underlying reference, the Hollenberg reference, the only way it
9 could function is to narrow the claim. So that's why they had
10 to add the additional limitation.

11 It is not like causing an automatic redirection is a
12 truly rare broadening amendment. It's of course a narrowing
13 amendment. They added it because they had to overcome what
14 we're all aware of, which is clicking on a link you don't know
15 where you're going, you have been taken somewhere else. That's
16 not good enough.

17 THE COURT: Okay. Thank you very much.

18 I appreciate it.

19 MR. RAMANI: Thank you, your Honor.

20 THE COURT: All right. Let's go to the next term,
21 which is related and has to do with the provision of
22 advertisements following or perhaps not following an automatic
23 redirection.

24 Mr. Norris, are you still --

25 MR. NORRIS: It is still me.

O71nsi t h

1 THE COURT: All right.

2 Maybe you can just help me again -- I think there is a
3 framing issue -- just to understand the dispute between the
4 parties.

5 MR. NORRIS: Yes.

6 The main dispute is we firmly believe this term just
7 requires its plain and ordinary meaning, no construction really
8 necessary.

9 Meta wants to state that the automatic redirection
10 must occur prior to providing advertisements to a user. It is
11 our position that, well, advertisements can come before the
12 redirection. The specification is very clear about that. It
13 is not limited to only providing targeted ads after a user has
14 been redirected to a new page based off an event.

15 It is right here in the specification. In one
16 embodiment, targeted advertisements are delivered when a user
17 connects to the SitNet. So as soon as they connect to the
18 system, they can get targeted ads.

19 Let's just say it is on the home page, right?

20 In another embodiment the user's home page is
21 automatically redirected to a website regarding the emergency
22 event. So they go from the home page with the targeted ads,
23 and they are redirected to a page.

24 Based on the affiliation of the user to the situation
25 to that emergency event, the advertising entity may deliver

O71nsi t h

1 targeted advertisements to each user, right?

2 That can be the same ads that they get on the home
3 page and can later come at this redirected page.

4 So the spec is clear. The user can get ads delivered
5 to them prior to being redirected to another page.

6 THE COURT: How does that work in the context of the
7 claim language?

8 Because there is a redirection to a web page and then
9 advertisements are displayed on the web page. So doesn't the
10 user have to be directed to the web page before it can receive
11 advertisements on that web page?

12 MR. NORRIS: That is true. There's still, like I
13 said, an embodiment where they can get those same ads before
14 they are ever redirected. But, yes, in that sequence --

15 THE COURT: I hear you that theoretically the scope of
16 the patent could be broad enough that you could have a claim
17 that uses different language and could address that embodiment.

18 MR. NORRIS: Yes.

19 THE COURT: But you don't have to have claims that
20 cover all the embodiments. We often don't.

21 MR. NORRIS: Yes.

22 THE COURT: Here, if I am not messing something, the
23 claim language specifically uses the website and says you can
24 get redirected to a website, and then there are advertisements
25 provided on the website. That would seem to indicate a

O71nsi t h

1 sequential redirection, and then advertisements are provided.

2 Do you disagree with that?

3 MR. NORRIS: I do not disagree with it, but I can
4 imagine a situation where a potential infringer can say: Hey,
5 no. We got our ads first before we were redirected to this
6 other page. We don't infringe. Yes, we present adds to a user
7 once they get redirected to this new page, but we initially
8 provided those advertisements on the home page.

9 We feel that it is just unnecessary to add this
10 additional language for those types of noninfringement
11 positions that be could be created.

12 And the claim speaks for itself, right?

13 THE COURT: That's a fair point. The claim does speak
14 for itself.

15 So I guess I will ask Meta the same question. Is this
16 a claim construction issue that the Court needs to resolve at
17 this juncture, or isn't this something that one would normally
18 handle either at summary judgment or later in the case?

19 Is this Ms. Chen

20 MS. CHEN: Yes. This is Yao Chen for Meta.

21 THE COURT: Okay.

22 Maybe you can tackle that first question, and then you
23 can respond to Mr. Norris' argument.

24 MS. CHEN: Sure, your Honor.

25 Our position is that there is still a live dispute for

O71n s i t h

1 Court to resolve. SitNet has conceded in their reply brief as
2 a practical matter "that redirection occurs before the very
3 first of the advertisements related to the event or situation
4 is provided to the device being redirected."

5 It is not entirely clear to Meta why, after agreeing
6 to that order as a practical matter, SitNet would still
7 disagree with Meta's order-of-steps construction.

8 But, in any event, the grammar and logic of the claim
9 requires that causing an automatic redirection to a web page
10 happens prior to providing ads for display on the web page.
11 This is a required construction of the claims. This is not
12 just a practical matter. So we are seeking a ruling from the
13 Court clarifying that.

14 THE COURT: Right. That's my question.

15 Because no one is suggesting that any of these terms
16 require construction on their own. It's really a question of
17 what the claim as a whole requires.

18 We usually address those types of arguments later in
19 the case on summary judgment in connection with jury
20 instructions. It is not really a claim construction dispute
21 about the meaning of any of the terms here.

22 Are you aware of any authority that would suggest that
23 this is a claim construction issue that needs to be addressed
24 at the *Markman* phase?

25 It is an unfair question. Don't worry if you don't

O71n s i t h

1 have the answer on hand. It is something that I was curious
2 about, given that this was different than all of the other
3 claim instruction issues that have been raised.

4 MS. CHEN: Sure, your Honor. I can try to answer that
5 question.

6 So a court will construe that the claim requires a
7 certain order of steps if the grammar and logic of the claim
8 require so, or if the specification literally requires a narrow
9 construction.

10 Courts repeatedly address that question during the
11 claim construction phase. And Meta's main concern is that
12 there's really nothing that stops SitNet from arguing at a
13 later point that automatic redirection to a web page may
14 somehow still take place after providing ads for display on
15 that web page.

16 THE COURT: That is especially pronounced, given the
17 fact that they are proceeding on this issue when they have that
18 statement that you started off with from the reply brief.

19 Is that fair?

20 You are saying, given that they've conceded that the
21 initial redirection has to happen before there is any showing
22 of advertisements, what is their position here is the question
23 that you would have for SitNet.

24 Is that fair?

25 Let me ask this question anyway.

O71nsi t h

1 Mr. Norris, you heard the question.

2 I think counsel appropriately focused on the language
3 from the reply brief that indicates at least as a threshold
4 matter there has to be a redirection first before there are
5 advertisements shown which would seem to fit with the grammar
6 of the claim.

7 Is there something else that you're trying to keep
8 open as an available option in terms of applying this claim
9 language?

10 MR. NORRIS: Well, I think we have to take into
11 consideration that there can be multiple iterations of this
12 process, number one. Right?

13 THE COURT: The redirection, advertisement shown --

14 MR. NORRIS: Another redirection, more advertisements
15 shown, redirection.

16 Plus I think we cited case law that suggests that if
17 the word comprising is used in the claim it doesn't mean that
18 these limitations, one has to come before the other, right?

19 I understand that there's an antecedent basis here for
20 the web page. But like I said earlier, we want to guard
21 against this noninfringement position that, okay, we provide
22 targeted ads before the redirection and postredirection as
23 well, but since we gave it to you, provided the targeted ads in
24 the beginning for the redirection, we don't infringe.

25 We are trying to guard against those types of

O71nsi t h

1 situations, those types of arguments they might try to bring up
2 later during this case, which is a fair position.

3 THE COURT: Yes.

4 Maybe we can allay those concerns, because in a
5 situation like that -- this is for Meta -- where there were
6 advertisements shown, but then there is an automatic
7 redirection to a web page and then advertisements are then
8 shown on that web page, you would agree that they didn't
9 somehow lose the case under this claim because of that initial
10 showing of a website.

11 I don't see how that would be in violation of the
12 terms of the claim. They are just saying the method of the
13 claim, or the system, if it is a system claim, is shown at the
14 point of automatic redirection and the subsequent showing of
15 the advertisement.

16 Is that fair, Ms. Chen?

17 MS. CHEN: Yes.

18 I just want to clarify that Meta is not trying to read
19 these claims as closed claims where nothing else may happen
20 after the final step. Meta simply argues that for purposes of
21 infringement an accused system must perform all of these steps
22 in the order written.

23 THE COURT: Yes.

24 MS. CHEN: Which we don't think SitNet ultimately
25 disagrees with, because they conceded that.

O71nsi t h

1 THE COURT: I don't think they're disagreeing with it
2 either. I think they're trying to avoid -- which you have now
3 clarified, I think -- it is not closed. So you could have a
4 situation where a website is shown. Then there is an automatic
5 redirection to a web page. That web page has advertisements.
6 You would at least satisfy those particular elements.

7 Is that fair, Mr. Norris?

8 MR. NORRIS: I think so.

9 I think you hit the nail on the head, though. This
10 term doesn't need to be construed. We feel as though it's its
11 plain and ordinary meaning, and it's unnecessary to read this
12 ad limitation into the claim, which isn't really defining any
13 word within the term.

14 THE COURT: Well, it doesn't seem like it needs to be
15 construed. It also doesn't seem like this dispute maybe should
16 have been raised.

17 But that's good. That is a good thing, because I
18 think that the parties are more or less on the same page, which
19 will take us to our last term here for the day, which is web
20 browser application.

21 Again I, don't think that there is a ton of daylight
22 between the parties and their positions. It seem like everyone
23 is sort of on the same page.

24 Could you give me your name?

O71nsi t h

1 MR. FISHER: Yes, your Honor. Alec Fisher on behalf
2 of Meta.

3 THE COURT: Mr. Fisher, maybe can you tell me where
4 the real dispute is between the parties.

5 MR. FISHER: Sure.

6 The dispute between the parties is whether, as SitNet
7 suggests in its proposed construction in its opening brief, a
8 web browser application is simply a software application that
9 allows a user to locate, access, and display web pages; or
10 whether a web browser application, as Meta proposes, allows a
11 user to browse World Wide Web pages on the internet.

12 That browsing functionality is core to the term web
13 browser, and we do not read SitNet's proposed construction as
14 synonymous with web browsing, which we believe this claim
15 requires.

16 We cite to several dictionaries from the time period
17 of the filing of this patent that similarly define the term web
18 browser as enabling web browsing or web surfing web pages
19 across the internet.

20 THE COURT: Okay. Maybe I am still not understanding
21 the dispute. But, as I take it, the issue is whether the
22 application has to allow, not browsing on a particular web
23 page, but browsing across pages.

24 Is that right?

25 MR. FISHER: That's correct, yes.

O71nsi t h

1 THE COURT: Browsing across pages on an intranet,
2 would that suffice?

3 MR. FISHER: In our view the core of the dispute is
4 whether one is able to browse across pages versus just view,
5 access, and display some unknown portion of the total network.
6 So, yes, we would agree that browsing web pages across an
7 intranet would be contemplated by this term.

8 THE COURT: From SitNet, is there any real dispute
9 here? I mean, what are we talking about here?

10 If there is a web browser application, it's going to
11 be able to do all these things. I absolutely agree that there
12 should not be some sort of importing of function in a
13 particular instance, because it is an application. It is a
14 piece of technology that can do a bunch of different things.

15 What it is used for in any particular instance is a
16 separate question. If we are just talking about the machine,
17 the question is, is it a web browser application?

18 I can't imagine -- I don't understand what the dispute
19 is, because I think counsel appropriately is like: Look, it is
20 a web browser. It has to be able to browse web pages.

21 Is SitNet taking a different position?

22 MR. HECHT: No. That's why we proposed plain and
23 ordinary meaning, because we don't think that there's much
24 mystery here.

25 This is well understood by, you know, people of

O71nsi t h

1 ordinary skill and people with less than ordinary skill in the
2 art.

3 We are just sort of very focused on the internet
4 versus intranet. So thank you for elucidating that response,
5 because if there's no disagreement on intranet browsing, that's
6 fine.

7 I mean, a web browser can browse HTML files that are
8 local, that are, you know, an intranet, that are in the
9 internet. That was the only thing that we were concerned
10 about, because we were seeing this as a way to inject the
11 noninfringement position potentially.

12 THE COURT: Okay. I don't know that there is a
13 crystal construction issue here, because I think what SitNet is
14 saying is that -- well, let me ask you this. Maybe this is a
15 fairer question, because there is a proposed construction.

16 What part of the proposed construction do you think is
17 there is some devil in the details here that we're concerned
18 about. Because it is an application that enables users to
19 browse.

20 I take it you have no issue with part of it.

21 MR. HECHT: No, not at all.

22 THE COURT: Then it's World Wide Web pages.

23 Do you have any problem with World Wide Web pages?

24 MR. HECHT: I think that goes beyond -- the web can
25 be -- I think the web is shorthand for internet.

O71nsi t h

1 THE COURT: World Wide Web may be confusing and may
2 suggest that it is internet.

3 MR. HECHT: It suggests a limitation, yes. That's
4 what we thought was improper.

5 THE COURT: You don't have a problem with web as
6 opposed to World Wide Web?

7 MR. HECHT: It says web browser. Web pages I think
8 means the same thing.

9 THE COURT: Okay.

10 Across the internet. What is the issue there?

11 MR. HECHT: Again, internet versus intranet.

12 THE COURT: It doesn't have to be across the internet?

13 MR. HECHT: It's unnecessary. Just web pages. That
14 is all.

15 THE COURT: Okay. Understood.

16 What about something that would be -- just in case
17 there are people who don't have any clue what a web browser
18 application would be, how about a construction that would be an
19 application that enables users to browse web pages?

20 MR. HECHT: I think that's fine.

21 THE COURT: Okay.

22 Mr. Fisher, I think the concern with the proposed
23 definition is that it potentially may introduce this issue of
24 function, meaning that if there is a mention of web browser
25 application, even if the technology would be capable of doing

O71nsi t h

1 those things in the particular way that that is used in Meta's
2 system, it does not have a function in a particular instance of
3 browsing pages across the internet as opposed to doing
4 something else, then you might make the argument based on the
5 construction that the claim element is not satisfied.

6 I think SitNet is saying: Look, like, you could make
7 whatever argument you want, but just the term itself has this
8 very basic understanding that shouldn't be really disputed.

9 I think we're trying to avoid that potential issue of
10 function being drawn in when really we are just thinking about
11 capability in terms of what the technology can do.

12 MR. FISHER: Understood, your Honor.

13 The core of our dispute and Meta's concern here is
14 that SitNet's proposed alternate construction did not capture
15 this browsing language. So the courts alternate proposed
16 construction that you discussed just now, Meta has no issue
17 with that proposed construction.

18 THE COURT: Okay. Great.

19 I believe, aside from that, there are two terms that
20 the party have agreed upon the constructions, am I right about
21 that?

22 Is there anything that I missed from either side?

23 MR. KANNAN: No, your Honor.

24 THE COURT: Okay. So what we will do here is we will
25 issue an order on claim construction shortly. You will have

O71nsi t h

1 that, and you can continue on your merry way through discovery.

2 While we are all here, are there any issues from
3 either side's perspective that we need to take up in terms of
4 discovery, potential assistance with settlement or resolution
5 of the case anything along those lines?

6 Anything from SitNet?

7 MR. NASH: Nothing from SitNet, your Honor.

8 THE COURT: Okay.

9 Mr. Ramani?

10 MR. RAMANI: Nothing from Meta, your Honor.

11 THE COURT: Without telling me the back and forth and
12 the number or anything like that, have there been any
13 discussions on settlement?

14 Is it not the right time, because you want to see my
15 great work of art in the claim construction order and then
16 maybe think about it?

17 MR. RAMANI: We haven't had any settlement
18 discussions, your Honor. I tend to find in these cases not
19 only do we need to typically get the claim construction order,
20 we also need to see what happens with IPRs, which we have filed
21 across all four patents, including the one your Honor
22 invalidated. Also, we need to see where the damages experts
23 come out.

24 THE COURT: What is the timelines on the petitions?

25 MR. RAMANI: We should be getting institution

O71nsi t h

1 decisions by early September.

2 THE COURT: Okay. All right.

3 Well, very well argued from everyone across the board.
4 I really appreciate that we had some younger lawyers argue.
5 You all did a really nice job on very dense and technical
6 information, so you all should be very proud and eagerly asking
7 your partners for the next opportunity for to you get into
8 court and argue. I am sure, based on your performance, they
9 will be happy to oblige.

10 With that thank you very much, and have a great
11 holiday coming up.

12 (Adjourned)