

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

FERID ALLANI,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 6:24-cv-00304-ADA

DEFENDANT APPLE INC.'S CLAIM CONSTRUCTION BRIEF

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Plaintiff Ferid Allani (“Allani” or “Plaintiff”) asserts two patents in this action: U.S. Patent No. 8,271,877 (the “’877 Patent”) and U.S. Patent No. 10,943,058 (the “’058 Patent”) (collectively the “Asserted Patents”). Defendant Apple Inc. (“Apple” or “Defendant”) hereby submits its opening claim construction brief for the Asserted Patents.

I. BACKGROUND

A. The Asserted Patents

The Asserted Patents purport to cover methods and devices for accessing information and services on the Web. ’877 Patent, col. 1:6-7. The ’058 Patent is a continuation of an application that is a division of the ’877 Patent and shares substantially the same specification as the ’877 Patent. According to the shared disclosure, the Web was widely used to search for information at the time of the invention. ’877 Patent, col. 1:10-16. Portal sites were available, which provided direct access to some pre-selected sites, or searching through headings, using choices represented by icons:

Furthermore, “portal” sites are presently developing, with a generalist or specialised objective, the function of which is proposing to a user on one hand direct accesses to some pre-selected sites and on the other hand accesses to headings. The choices of a site or of a heading are represented either by a designation or by an icon or a fixed or animated image. Pointing and clicking by means of a mouse on the corresponding active zone causes generating by the navigation software a Web address on Internet, permitting access to selected site, and within said site, to a document or a plurality of searched documents. In fact, in response to such a request, the requesting station can receive either directly a document, or usually a new HTML page containing itself a more and less high number of links among which the user will still have to make a new choice.

Id. at 1:20-35.

However, the specification explains that process of sifting through Web search results was time-consuming and tedious for users. *Id.* at 1:10-50. It states that “a delay corresponds to each request-answer step, with a variable duration conditioned by non-controllable parameters like traffic on the network, jamming and power of servers in the consulted sites or also the memory

size of the received pages,” which “results in a real discomfort felt by a number of Internet surfers, so far as to dissuade some of them from launching an information search that could prove to be long, tedious and uncertain.” *Id.* at 1:36-43. Additionally, the specification explains that “the question of providing users that are not accustomed to computer tolls and Internet with a quick and easy access to information sources and services, also arises, while said quick and easy access is not properly provided by the generalist portals presently available on the Web.” *Id.* at 1:44-50.

The Asserted Patents purport to solve these alleged problems essentially by storing a portal web site locally on the user’s computer, resulting in a method “that is quicker and easier to use” than existing methods. *Id.* at 1:65-2:3. The locally-stored portal displays a page from “a plurality of selection pages organized within a structure of a tree menu and beforehand locally stored,” each of which comprises “selection icons for locally accessing another selection page within said structure of tree menu” and “icons for directly accessing remote sources of information.” *See id.* at 2:4-26. By “locally implementing preliminary selection steps in pages organized in a tree manner and operating as rolling menus, and by finally emitting on Internet only a complete address for accessing a well-targeted information source, the mean time duration observed for accessing searched information is drastically reduced.” *Id.* at 2:27-32.

B. The ’877 Patent

The parties dispute the construction of five terms in the ’877 Patent: (1) “web site”; (2) “selection page”; (3) “icon”; (4) “direct access icon”; and (5) “said address being locally generated.” Asserted independent claim 12 recites each of the disputed claim terms:

12. A device for accessing information- or service-providing **web sites** comprising a mobile communication device connectable through a communication network to the Internet, control and processing device or devices, data storage device or devices, a display, and pointing and selection device or devices, said storage device or devices containing a plurality of **selection pages** each comprising a set of **icons**, characterized in that, for each

said **selection page**, the set of **icons** includes one or more **direct access icons** for directly accessing an information- or service-providing web site and one or more **selection icons** for locally accessing another selection page within a structure of a tree menu, wherein at least one of said **selection pages** comprises two or more **direct access icons**,

and in that the control and processing device or devices are programmed for:

enabling a **preliminary search locally performed within said communication device in different themes and sub-themes within a plurality of selection pages organized in said structure of tree menu and beforehand locally stored in said data storage means within said communication device**, each said selection page comprising a set of icons including one or more **icons** for **directly accessing** an information- or service-providing web site and one or more **selection icons** for locally accessing and displaying on the display means another **selection page** within said structure of **tree menu**, and

emitting on the communication network, in response to selecting a **direct access icon** by pointing and selection device or devices in a **selection page** being currently displayed, an address of an information- or service-providing web site corresponding to said selected **direct access icon**, **said address being locally generated during the preliminary search and selection steps**.

C. The '058 Patent

The parties dispute the construction of three terms unique to the '058 Patent: (1) “locally generated during said displaying and selection and for directly accessing said information- or service-providing Web site”; (2) “specifically designed to include”; and (3) “directly accessing a search engine on the Web.” Asserted independent claims 24 and 27 recite these terms:

24. A mobile communication device connectable to remote sources of information or services through a communication network, the communication device comprising a display, data storage, a processor, a controller and a plurality of pages locally stored in said data storage and displayable on said display,

wherein a first one of said locally stored pages is **specifically designed to include** at least one direct access icon capable of being selectively activated to connect said mobile communication device to a first predetermined one of said remote sources of information or services, and at least one selection icon capable of being selectively activated to display a second one of said locally stored pages on said display, wherein said second one of said locally stored pages is **specifically designed to include**

at least one second direct access icon capable of being selectively activated to connect said mobile communication device to a second predetermined one of said remote sources of information or services, and at least one second selection icon capable of being selectively activated to display a third one of said locally stored pages on said display, wherein said third one of said locally stored pages is **specifically designed to include** at least one third direct access icon capable of being selectively activated to connect said mobile communication device to a third predetermined one of said remote sources of information or services, or at least one third selection icon capable of being selectively activated to display a fourth one of said locally stored pages on said display, wherein the mobile communication device is a mobile phone.

27. A method for accessing information- or service-providing Web sites, from a mobile communication device connected through a communication network and provided with a display, comprising

a preliminary search for information or service, locally performed within said communication device in different themes and sub-themes within a plurality of successively displayed selection pages, said selection pages being organized in a tree menu structure and beforehand locally stored within said communication device, each said selection page being **specifically designed** to include a set of icons, said selection pages further comprising a first selection page, a second selection page and a third selection page, said first selection page being **specifically designed to include** a selection icon for locally accessing said second selection page, and said second selection page being **specifically designed to include** a selection icon for locally accessing said third selection page, said third selection page being **specifically designed to include** one or more direct access icons for directly accessing an information- or service-providing Web site, and

emitting on the communication network, in response to a selection of a direct access icon in a selection page being currently displayed, an address of an information- or service-providing web site corresponding to said selection icon, said address being **locally generated during said displaying and selection and for directly accessing said information- or service-providing Web site**,

wherein:

at least one of said selection pages further being specifically designed to include one or more icons for **directly accessing a search engine on the Web**, and

the mobile communication device is a mobile phone.

II. DISPUTED CLAIM TERMS

A. The '877 Patent

1. “web site”

Term	Allani’s Proposed Construction	Apple’s Proposed Construction
“web site” '877 Patent claims 12 and 19 '058 Patent claim 27	A source of information or services accessible via a network using HTTP or another web protocol.	No construction/plain and ordinary meaning which is “a collection of web pages accessible through a web address”

Allani’s proposed construction contradicts the plain and ordinary meaning of this term and impermissibly redefines “web site” to instead mean any source of information accessible using the HyperText Transport Protocol (HTTP) or any other unspecified “web protocol,” without regard to whether the “information” is a web site or some other kind information. This is not the ordinary meaning of “web site,” and is not supported by the specification.

There are “only two exceptions to [the] general rule” that claim terms are construed according to their plain and ordinary meaning: “1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of the claim term either in the specification or during prosecution.” *Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1365 (Fed. Cir. 2014) (quoting *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012)); *see also GE Lighting Sols., LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014) (“[T]he specification and prosecution history only compel departure from the plain meaning in two instances: lexicography and disavowal.”). Neither of these exceptions applies here.

The term “web site” has a plain and ordinary meaning; it refers to a collection of web pages accessible through a web address. The HTTP protocol, by contrast, is a protocol that *can* be used to request and retrieve web pages by web a user’s browser, but *can also* be used to send any kind of information, including information such as status information, streaming media or simple

acknowledgements, none of which are web pages, much less a web site. Allani's proposed construction contradicts the plain meaning of "web site" and attempts to broaden the claims to include *any* kind of information beyond web pages by redefining "web site" to refer to **how** that information can be accessed rather than **what kind** of information is accessed.

There is nothing in the specification that supports Allani's proposed construction. Indeed, the specification does not even mention HTTP or web protocols, much less explain that these protocols are used to access web sites, or define "web site" based on them. Accordingly, Allani cannot reasonably argue that the specification defines "web site" in the way it proposes, which is inconsistent the plain and ordinary meaning. If anything, the specification makes clear that the term "web site" refers to a collection of web pages associated with a web address, consistent with Apple's construction and its plain and ordinary meaning. For example, the specification distinguishes web sites from the methods used to access them:

To ***permit access to Web sites*** providing said information and services, navigation software like Internet Explorer™ or [Netscape] Navigator™ have been widely diffused and nowadays equip every personal computer and workstation connected to the Internet. These navigation software ***permit access to sites*** providing with search engines like Yahoo!™ or Voila™ ***allowing to emit requests in natural language and to receive in return a plurality of sites classified by decreasing relevance order.***

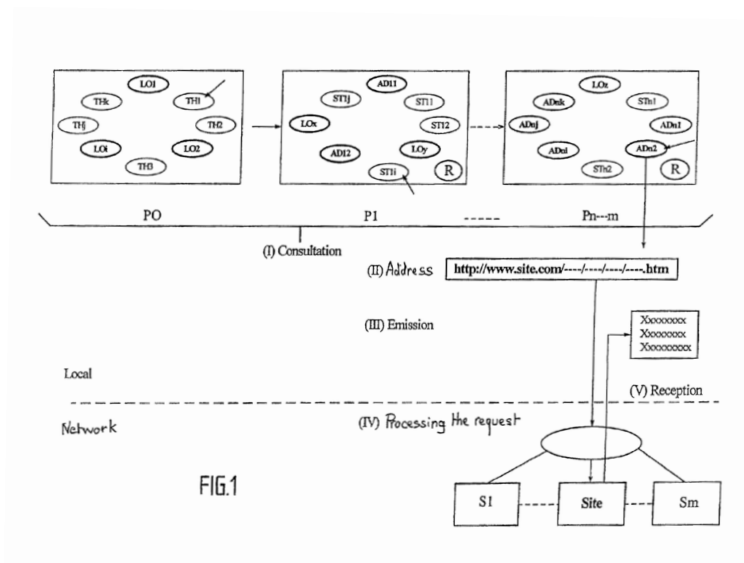
'877 Patent, col. 1:12-19 (emphasis added).

The specification also teaches that, consistent with Apple's construction, "web sites" refer simply to a collection of pages accessible through a web address:

The choices of a site or of a heading are represented either by a designation or by an icon or a fixed or animated image. Pointing and clicking by means of a mouse on the corresponding active zone causes ***generating by the navigation software a Web address on Internet, permitting access to selected site, and within said site, to a document or a plurality of searched documents.*** In fact, in response to such a request, the requesting station can receive either directly a document, or usually a new HTML page containing itself a more and less high number of links among which the user will still have to make a new choice.

'877 Patent, col. 1:24-35 (emphasis added); *see also id.* at 2:49-50 (“If [it] is an icon with the ‘direct access icon’ type, the next step will be a step for emitting an address towards a Web site.”).

Figure 1 in the specification depicts this concept pictorially, because it shows that the selection of a particular icon takes a user to a web site associated with a particular web address. '877 Patent, col. 4:42-44 (“the user selections the icon Adn2 ‘Club of supporters’ and the activation of this icons causes generating (II) the complete address of the welcome page for this site, given as a way of non-limitative example: <http://site.com/--/--/--.htm>.”).



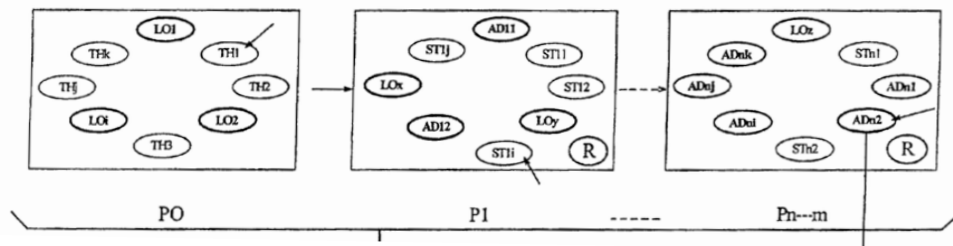
'877 Patent, Fig. 1. The Court should therefore reject Allani’s attempt to redefine “web site” in a manner inconsistent with the specification and its ordinary meaning.

2. “selection page”

Term	Allani’s Proposed Construction	Apple’s Proposed Construction
“selection page” ’877 patent claims 12 and 17 ’058 patent claims 25 and 27	A screen with selectable icons that are displayed together on a graphical user interface	No construction/plain and ordinary meaning

Allani's proposed construction improperly attempts to broaden the term "selection page" to mean any "screen" with icons that is displayed by a "graphical user interface" without regard to whether, as required by the claims, a selection page is locally stored in the claimed "storage device" when it is not being displayed. The patents describe the selection pages as they are used in the invention: "displaying a selection page among a plurality of selection pages in a treelike arrangement and **stored locally.**" '877 Patent, Abstract. This is reflected in the claims themselves, as well. See '877 Patent, claim 12 ("within a plurality of selection pages organized in said structure of tree menu *and beforehand locally stored* in said data storage means within said communication device"). The claimed selection pages exist regardless of whether they are being displayed, as recited by the claims: "in a selection page **being currently displayed.**"

Figure 1 and its associated description describe the selection pages as used in the claimed invention, "[a] first **page PO**, displayed during the initialisation of the apparatus, for example contains: icons LO1, LO2, ..., LOi." '877 Patent, col. 3:57-65. The specification continues, explaining the next selection page P1: "If the user of the apparatus points [and] and clicks on [the SPORT] icon, a **page P1** dedicated to the SPORT theme is then displayed. This **page P1** contains for example: an icon LOx for accessing a site dedicated to a plurality of sports and an icon LOy for accessing a site of a major Soccer club." '877 Patent, col. 4:4-20.



'877 Patent, Fig. 1.

Allani's proposed construction is incompatible with the rest of the claim language, as a

screen displayed by a graphical user interface is not something that can be stored locally. Further, Allani's construction is redundant of the claim language, which already expressly recites that the selection pages must contain both selection icons and direct access icons. *See* '877 Patent, claim 12 ("each said selection page comprising a set of icons including one or more icons for directly accessing an information- or service-providing web site and one or more selection icons for locally accessing and displaying on the display means another selection page within said structure of tree menu"). Allani's construction, which requires only that the selection pages must contain "selectable icons that are displayed together" is redundant of these limitations, but also provides less clarity because it just requires "selectable icons" rather than the selection and direct access icons that are expressly required by the claims. In other words, Allani's proposed construction is not helpful in understanding what a selection page is, at the very least because it adds more ambiguity than a literal reading of the claims themselves.

3. "icon"

Term	Allani's Proposed Construction	Apple's Proposed Construction
"icon" '877 patent claims 12, 15, 17-19 '058 patent claims 25 and 27	Plain and ordinary meaning	A symbol that is a pictorial indication of a command

The specification shows that the claimed icon indicates to a user the function or step that the icon performs when it is selected. For example, the specification teaches that on portal sites "[t]he choices of a site or of a heading are represented either by a designation or by an icon or a fixed or animated image." '877 Patent, col. 1:24-25. In a similar vein, the specification teaches that "icons for directly accessing a merchant or institutional site can reproduce the logotype of this site." '877 Patent, col. 2:41-43. The icon thereby indicates to a user that clicking the icon will

invoke a command to connect to a particular site, heading or merchant.

The specification also provides an example of icons visually representing languages a user might wish to use to facilitate access to information they are searching for:

Furthermore, it is particularly advantageous to plan in the welcome page icons for selecting a consulting language among a plurality of proposed languages, for example under the form of flags for States wherein each proposed language is used. For that, several sets of selection pages beforehand stored each corresponding to a proposed language will be provided.

'877 Patent, 2:59-63. In this example, the use of different flag icons indicates to a user that selecting such an icon will invoke a command to retrieve a version of the selection pages in the language of the nation indicated by the icon. *See id.* at 3:65-4:5 (“a user can thus locally achieve, in the language according to his choice, a preliminary search in the different themes, sub-themes or sub-categories....”). The specification further describes an application of this concept to selection icons and direct access icons:

The selection icons preferably include an item or thematic title opening and access to a page dedicated to a given activity or theme, and present graphic features that are distinctive from those of the direct access icons. The user is thus informed about the nature of the step that follows his selection. If [it] is an icon with the ‘direct access icon’ type, the next step will be a step for emitting an address towards a Web site. On the contrary, if it is an icon with the ‘selection icon’ type, the next step will be a new selection step in a selection page.

'877 Patent, 2:44-52. Further, Apple’s proposed construction captures how the term would be understood by a POSITA as shown by the cited extrinsic evidence. *See, e.g., Ex. A, The IEEE Standard Dictionary of Electrical and Electronics Terms* (Sixth Ed. 1997), “**icon** - A symbol that is a pictorial indication of a command or object and is located on a graphics tablet or an on-screen menu.”) For these reasons, “icon” should be construed to mean “a symbol that is a pictorial indication of a command.”

4. “direct access icon”

Term	Allani’s Proposed Construction	Apple’s Proposed Construction
“direct access icon” ’877 patent claim 12 ’058 patent claims 25 and 27	An icon that, when selected, causes an address of at least one website to be transmitted to a network. (’877 patent claims 12, 15, 17-19, and ’058 patent claim 27) An icon that, when selected, causes an address of at least one remote information or service source to be transmitted to a network. (’058 patent claim 24-26)	An icon that, when selected, causes a request to be sent directly to a web server hosting the website indicated by the icon

Allani’s proposed constructions for this term are contrary to the stated purpose of the invention. The specification explains that, prior to the invention, traditional methods of searching for information on the Web were tedious and time-consuming, and required users to sift through unwieldy search results that may or may not be relevant. *See* ’877 Patent, col. 1:12-61. Yet the specification acknowledges that these traditional methods of searching for information on the Web involved transmitting the addresses of web sites onto the Internet network. *Id.* at 2:26-28. (“Pointing and clicking by means of a mouse on the corresponding active zone causes generating by the navigation software a Web address on Internet, permitting access to selected site....”).

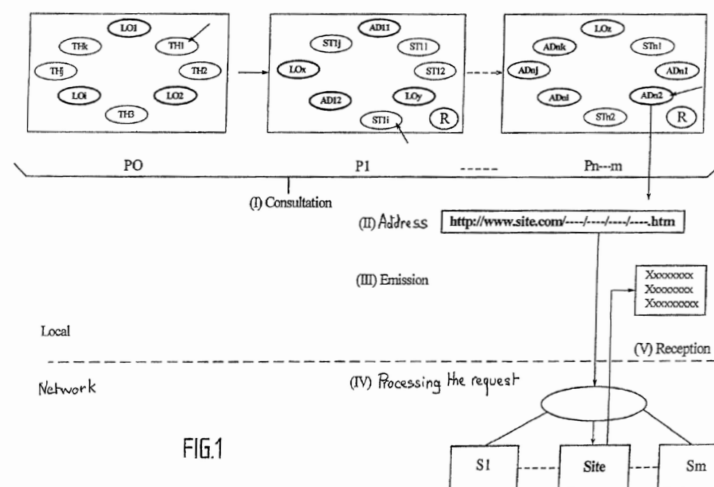
The Asserted Patents purport to solve the problems with prior-art methods by providing locally stored pages that include “direct access icons” that take the user directly to the specific information they are trying to access. *Id.* at 2:4-36 (“Thus, by locally implementing preliminary selection steps in pages organized in a tree manner and operating as rolling menus, and by finally emitting on Internet **only a complete address for accessing a well-targeted information source**, the mean time duration observed for accessing searched information is drastically reduced.”) (emphasis added); *see also id.* at 2:49-50 (“If [it] is an icon with the ‘direct access icon’ type, the

next step will be a step for emitting an address towards a Web site.”).

As shown in Figure 1, the specification discloses that after a “consultation” of multiple locally-stored pages, the user may activate an icon that causes the system to generate the complete address of the desired Web site and send it to the site, which returns a welcome page:

Then the user selects the icon ADn2 “Club of supporters” and the activation of this icon causes generating (II) the complete address of the welcome page for this site, given as a way of non-limitative example: <http://site.com/---/---/---.htm>

This address is then emitted (III) on the Web through the communication network to which the apparatus is connected, towards the concerned site which, in return, ***sends a welcome page which is received (V) and displayed by the user who is able to consult the searched information and achieve the desired order.***



'877 Patent, Fig. 1; 4:45-50.

The alleged advantage of this method of organization is that, when a user ultimately selects a direct access icon after narrowing the universe of information down by navigating through themes and sub-themes, they are taken ***directly*** to the web site they want without any further action or need to sift through search results. See '877 Patent, col. 4:51-55 (“Thus the user has been able to access without any difficulty the information source being searched with a signal request-answer

sequence, the whole operations for selecting themes and sub-themes having been beforehand locally realized by means of the method according to the invention.”). This disclosure also supports that the direct access icon must identify which website the user is being taken to. ’877 Patent, Fig. 1; 4:41-44 (“Then the user selects the icon ADn2 “Club of supporters” and the activation of this icon causes generating (II) the complete address of the welcome page for this site, given as a way of non-limitative example: <http://site.com/—/—/—/—.htm>”). It would defeat the purpose of the invention if the user could not tell from the direct access icon that they are being taken to a web site – and which web site they are being taken to – because the user would have no way to know if they were being taken directly to the information they were seeking to access.

Allani's construction does not reflect this key aspect of the invention because it does not require that the address is sent directly to the desired web site, as indicated to the user by the direct access icon. Instead, it requires only that the direct access icon "causes an address of at least one web site to be transmitted to a network." As in the prior-art systems distinguished in the Background section of the specification, this address could be for another "HTML page containing itself a more and less high number of links among which the user will still have to make a new choice." '877 Patent col. 1:32-35. Allani's construction is therefore inconsistent with the "direct access" provided by the "direct access icon," and therefore should be rejected.

5. “said address being locally generated”

Term	Allani's Proposed Construction	Apple's Proposed Construction
“said address being locally generated”	Said address being stored on the device in table or base of addresses or generated on the device	Said address being created on the device
'877 patent claims 12, 15, 17-19		
'058 patent claim 27		

The context of the invention makes clear that “locally generated” means that the address

of the Web site the user is requesting to access by selecting a direct access icon must be created on the device (e.g., locally) in response to that selection, rather than, for example, on a remote server. “The specification is ‘the single best guide to the meaning of a disputed term,’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1321 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996)); *see also Winans v. Denmead*, 56 U.S. 338-39 (1854) (construing claims by considering the “structure or device, described by the patentee, as embodying his invention,” the “mode of operation” of the structure or device, the “results ... attained by means of this mode of operation,” and whether the “claim cover[s] the described mode of operation by which the result is attained”), *cited in Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 382 (1996).

The specification demonstrates, through its description of the invention, that the term “local” refers to something done on the device. For example, when discussing selection pages, the specification states that they are “locally stored ***within said communication device.***” ’877 Patent, col. 2:10-11 (emphasis added). Consistent with this description, in discussing Figure 2, the specification teaches that, “[t]his first page Po constitutes the trunk of a tree structure schematically represented in FIG. 2 for the whole screen-pages ***locally stored in a storage unit, for example a hard disk unit or a CD-ROM, of the apparatus wherein this method is implemented.***” ’877 Patent, col. 3:66-4:3 (emphasis added). By contrast, the specification refers to “remote sources of information,” connoting that these sources of information are not stored or located on the device. *See, e.g.*, ’877 Patent, col. 2:17-21 (“the set of icons includes one or more icons for directly accessing ***remote information sources***”), 3:14-18 (same). While the terms “local” and “remote” are clear on their face, the specification’s use of these words in different contexts shows that, when the patent refers to something that is “local,” it is referring to something that is on the device where the claimed method is implemented, rather than, for example, something that is performed or exists

on a remote server. This also makes sense when considering the purpose of the invention, which is intended to make accessing information on the Web “quicker and easier to use.” ’877 Patent, col. 1:65-2:3. It is quicker to generate a Web address locally than it would be to, for example, send a request to a remote server to generate a Web address, as “quick and easy access is **not** properly provided by the generalist portals presently available on the Web.” ’877 Patent, col. 1:48-51 (emphasis added).

Furthermore, Apple’s proposed construction is consistent with the rest of the claim language, namely that after the user performs a “preliminary search **locally performed within said communication device**” within the plurality of selection pages that are “locally stored in said data storage means **within said communication device**,” the address is then created on the device.

Apple’s proposed construction is consistent with the plain meaning of “local,” the use of that term in the claims themselves, and the disclosure in the specification, because it requires that the creation of the web site the user is attempting to access occurs on the device. The “construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Tr. of Columbia Univ. of N.Y. in the City of N.Y. v. Symantec*, 811 F.3d 1359, 1366 (Fed. Cir. 2016).

B. The ’058 Patent

1. “specifically designed to include”

Claim Term	Allani’s Proposed Construction	Apple’s Proposed Construction
“specifically designed to include” ’058 Patent claims 24-27	Used to include. Not indefinite	Indefinite

This term is indefinite because it requires a subjective intent, ostensibly on behalf of the engineer designing the claimed mobile communication device, to “specifically design” the mobile

communication device to include a selection page comprised of selection icons and direct access icons. To comply with § 112, a patent “must provide objective boundaries for those of skill in the art.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). Thus, “[t]he scope of claim language ***cannot depend on the unrestrained, subjective opinion of a particular individual.***” *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1350 (Fed. Cir. 2005) (emphasis added), *abrogated on other grounds* by *Nautilus*, 572 U.S. at 901; *see also* *Intell. Ventures I LLC v. T-Mobile USA, Inc.*, 902 F.3d 1372, 1381 (Fed. Cir. 2018) (“While a claim employing a term of degree may be definite where it provides enough certainty to one of skill in the art when read in the context of the invention, a term of degree that is purely subjective and depends on the unpredictable vagaries of any one person’s opinion is indefinite.”) (internal quotations and citations omitted).

There is nothing in the specification that explains what it means to “specifically design” the system to include the recited features. The only place in the patent where this term even appears is in the claims themselves. Because there is no guidance in the specification for what it means to specifically design the system to include certain features, this term is purely subjective and depends entirely on a designer’s opinion as the final arbiter. Courts have held claim terms like this indefinite. *Id.*; *Intell. Ventures I LLC v. T-Mobile USA, Inc.*, 2018 WL 5809267, at *4-5 (E.D. Tex. Nov. 6, 2018); *Datamize*, 417 F.3d at 1350.

As the courts in these cases emphasized, the inclusion of a term that requires a subjective intent makes the boundaries of the invention unclear. With respect to the asserted claims, for example, if an accused device included selection pages that contained selection and direct access icons, but the engineer did not subjectively intend to design the selection page to include these icons, then that device would not infringe the claim, even if the selection page literally contained

selection and direct access icons as required by the claims. Conversely, if an accused device were specifically designed to include a selection page comprising selection and direct access icons, but as accused did not actually include such a page (for example, if it were designed so that a user could later add a selection page), then that mobile communication device might arguably infringe the claims despite lacking any selection page. This leads to absurd and nonsensical results that make it virtually impossible for an accused infringer to determine the boundaries of the invention and whether or not they infringe. This lack of clarity is the hallmark of an indefinite claim term. The Court should therefore find the claims containing this term indefinite.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 27, 2025, all counsel of record were served with the foregoing document via electronic service.

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