

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

FERID ALLANI,

Plaintiff,

v.

APPLE, INC.

Defendant.

CIVIL ACTION NO. 6:24-cv-304-ADA

**PLAINTIFF FERID ALLANI'S SURREPLY CLAIM CONSTRUCTION BRIEF**

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| <b>ABBREVIATION</b> | <b>TERM</b>                         |
|---------------------|-------------------------------------|
| Allani              | Plaintiff Ferid Allani              |
| Apple               | Defendant Apple, Inc.               |
| The '877 patent     | U.S. Patent No. 8,271,877           |
| The '058 patent     | U.S. Patent No. 10,943,058          |
| The patents-in-suit | The '877 patent and the '058 patent |
| POSITA              | Person of ordinary skill in the art |

## **I. INTRODUCTION**

Apple’s reply brief offers little more than a selective and inconsistent reading of the claim language, the intrinsic record, and the expert testimony. In many instances, Apple’s proposed constructions are internally contradictory, ignore the specification, or introduce ambiguity under the guise of clarity. Apple also repeatedly misrepresents Allani’s positions, construing them more narrowly than asserted, and often ignores or misconstrues extrinsic evidence—including its own. Far from resolving disputes, Apple’s constructions risk confusing the jury, limiting the claims without support, and undermining the real-world context in which a POSITA would understand these terms. Thus, the Court should adopt Allani’s proposed constructions and reject Apple’s.

## **II. DISPUTED CLAIM TERMS**

### **A. The ’877 Patent**

#### **1. “web site”**

The Court should reject Apple’s invitation to believe that everyone knows what a “web site” is. Although the term “web site” may be familiar to a lay juror, its meaning to POSITA is not as straightforward as Apple tries to make it seem. Indeed, Apple cites 11 dictionary definitions of “web site” in its Disclosure of Extrinsic Evidence but none of them are the same.<sup>1</sup> Not only does Apple’s proposed construction not appear in any of these dictionaries, but it introduces more ambiguity than it resolves. For example, Apple defines “web site” in terms of “web pages” without clearly defining what a “web page” is. In particular, Apple’s proposed construction fails to clarify whether a “web page” is limited to an HTML document. As such, Apple’s proposed construction will create confusion and will not be helpful to the jury.

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<sup>1</sup> Exs. 8-9.

Apple's response to Allani's argument that web pages are not necessary features of a "web site" is incorrect. Tellingly, Apple fails to address any of the definitions of "web site" that Allani provided that do not mention web pages.<sup>2</sup> Moreover, Apple identified several dictionaries in its Disclosure of Extrinsic Evidence that do not define a "web site" as having web pages.<sup>3</sup> The patents-in-suit do not even use the term web pages. Apple's expert Nathaniel Polish further admitted that "web sites" certainly do not require multiple web pages as required by Apple's construction; a web site could consist of a single web page.<sup>4</sup>

Apple complains that Allani's proposed construction omits the key concept of HTML documents.<sup>5</sup> But so does Apple's proposed construction. Not only does Apple's proposed construction not mention HTML documents, but Apple is careful not to say that web sites must have HTML documents. Nor could it. While Apple implies that a "web page" must be an HTML document (asserting that "web pages are created with HTML"), Dr. Edwards testified that "I don't think that a web page in the mind of a person of ordinary skill would be limited to HTML files."<sup>6</sup> Indeed, as Dr. Edwards testified, a website could consist solely of non-HTML files like JPEGs served via HTTP.<sup>7</sup> Such a setup would qualify as a "web site," despite lacking HTML.<sup>8</sup> Not surprisingly, Apple's Disclosure of Extrinsic Evidence cites several dictionaries that define a "web site" without requiring HTML documents.<sup>9</sup> This evidence further shows that HTML documents are not a necessary feature of a "web site."

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<sup>2</sup> Dkt. No. 23 at 5-6.

<sup>3</sup> Ex. 9.

<sup>4</sup> Ex. 10 at 81:13-21.

<sup>5</sup> Dkt. No. 24 at 2-3.

<sup>6</sup> Dkt. No. 24-4 at 90:18-20.

<sup>7</sup> Dkt. No. 24-4 at 144-145.

<sup>8</sup> *Id.*

<sup>9</sup> Ex. 9.

In short, Apple’s proposed construction suffers from the same alleged deficiencies as Allani’s proposed construction but is even less helpful. None of the extrinsic evidence that Apple relies on defines a web site as “a collection of web pages accessible through a web address.” Apple’s contention that a web site must have multiple web pages also conflicts with the extrinsic evidence cited by both parties and injects unnecessary ambiguity into the term. The lack of consensus in extrinsic sources support Allani’s broader interpretation of a “web site” as not requiring HTML-based web pages. Accordingly, the Court should adopt Allani’s proposed construction and reject Apple’s proposed construction.

## 2. “selection page”

Contrary to what Apple claims, Allani does not try to remove the concept of a page from the term “selection page.” Rather, Allani defines “selection page” consistent with its usage in the patents-in-suit. The patents-in-suit’s own terminology, “screen-page”, shows that the inventor treated “page” and “screen” interchangeably. In the user interface sense, a view or display of grouped elements on a device may be referred to as a screen. That is what the patents-in-suit mean when they refer to “whole screen-pages” in connection with Figure 2. The patents-in-suit are not trying to distinguish between “pages” and “screens” as Apple contends.<sup>10</sup> All the pages  $P_n$  in Figure 2 are referred to as “whole screen-pages”—meaning that they represent a screen displayed by the interface.<sup>11</sup> The distinction that Apple is trying to make is between a “page” and a physical “screen” of the device, *e.g.* LCD or OLED, which is not what Figure 2 is depicting.

The term “selection page” is not commonplace or a universally understood phrase. Indeed, the term does not appear in the over five million books scanned by Google Books Ngram Viewer.<sup>12</sup>

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<sup>10</sup> Dkt. No. 24 at 3.

<sup>11</sup> Dkt. No. 1-1 at 3:66-67-4:3; Dkt. No. 1-2 (the ’058 patent) at 4:4-8.

<sup>12</sup> Ex. 11.

Apple also provides no support that a regular user would understand the difference between “page” and “screen.”<sup>13</sup> Putting aside the fact that patent claim terms are understood from the perspective of a POSITA and not a regular user, Apple also fails to explain how a regular user would understand the term “selection page,” much less a POSITA. Construing this term as “plain and ordinary meaning” effectively gives this term no meaning and leaves too much room for ambiguity, especially at trial. The Court should construe this term to assist the jury in understanding what the inventor meant. Allani’s proposed construction does that and should be adopted.

### 3. “icon”

Apple’s proposed construction of the term “icon” is flawed because it is limited to “a pictorial indication of a command” and excludes embodiments that use logos, images, or graphics without clear “command” connotations, which is improper.<sup>14</sup> The specification expressly discloses numerous icons that are not indications of a command:

icons LO1, LO2, . . . , Loi featuring logotypes, graphic or semi-graphic marks, merchant sites or portals for entering major commercial brands, for example a chain of hotels or restaurants or a large-scale distribution company,

icons TH1, TH2, TH3, . . . , THj, THk each corresponding to a general purpose category or theme, for example sport, television, weather forecast or stock exchange.<sup>15</sup>

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<sup>13</sup> Dkt. No. 24 at 3.

<sup>14</sup> See *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583-84 (Fed. Cir. 1996) (holding that an interpretation of a disputed claim term that does not fall within the scope of the patent claim is rarely, if ever, correct and requires highly persuasive evidentiary support).

<sup>15</sup> Dkt. No. 1-1 at 3:58-65; Dkt. No. 1-2 (the ’058 patent) at 3:63-4:3.

Apple even acknowledges that the patent contemplates icons may comprise a logotype of a merchant.<sup>16</sup> Logotypes of merchants are not commands—they are brand indicators. Thus, Apple’s own arguments undermine its construction.

Apple’s claim that the extrinsic evidence cited by both parties supports Apple’s construction also lacks merit. As Apple states, the Barron’s Dictionary of Computer and Internet Terms provides examples of icons that represent different *programs*, not commands.<sup>17</sup> Even assuming that the “trash” icon discussed in Barron’s could be considered an indication of command to delete something, which Allani disputes, the icons shown in Figure 126 of Barron’s are not commands to do anything. For example, the “Notepad” icon is not a command to a computing device to take notes. It is a way to launch a note taking application.<sup>18</sup> Similarly, Apple fails to explain how a user knows just by looking at icons like the “MarkVision Printer Utility” what will happen when they select it. Dr. Polish could not explain what happens either.<sup>19</sup>

Apple’s explanation for why it dropped the “or object” part of The IEEE Standard Dictionary of Electrical and Electronics Terms (Sixth Ed. 1997) definition of “icon”—the only source Apple cites for its definition—is unavailing.<sup>20</sup> Apple misrepresents the object-indicating nature of the claimed icons. A direct access icon points to a remote resource, (i.e., a web site), which is an object. A selection icon points to a screen/page it links to—also an object.<sup>21</sup> Therefore, Apple is incorrect to say that neither type of icon refers to an object; they plainly do in the context

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<sup>16</sup> Dkt. No. 24 at 6.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> Ex. 10 at 119:4-9.

<sup>19</sup> Ex. 10 at 116:17-23.

<sup>20</sup> Dkt. No. 24 at 5.

<sup>21</sup> Ex. 10 at 120:5-24.

of the claims.<sup>22</sup> Because both the intrinsic record and the parties' extrinsic evidence show that Apple's proposed construction is too narrow, the Court should reject it.

#### 4. "direct access icon"

Apple misconstrues Allani's argument regarding "the website indicated by the icon" language of Apple's proposed construction. Allani does not dispute that an icon *may comprise* a logotype of a merchant. Allani also does not dispute that an icon *may include* the name of the web site that it links to. The problem with Apple's proposed construction, however, is Apple's choice of words. Taken literally, "the website indicated by the icon" means that the name of the web site *must* appear in the icon. The intrinsic record shows that this narrow meaning that Apple appears to advocate is incorrect. The specification states that "icons for directly accessing a merchant or institutional site *can reproduce* the logotype of this site."<sup>23</sup> Claim 5 of the '877 patent states "an icon for directly accessing a merchant site *includes* a logotype of said merchant site."<sup>24</sup> Claims 19 and 20 of the '058 expressly distinguish between icons that "*comprise* logotypes, graphic marks or semi-graphic marks" and those that "*comprise* textual elements."<sup>25</sup> Because "the website indicated by the icon" is ambiguous as to what visual or symbolic features a direct icon must possess, Apple's proposed construction will create confusion for the jury and should be rejected.

The "directly" language of Apple's proposed construction also is problematic. Again, Allani does not dispute that Figure 1 of the patents-in-suit shows an address of a web site being transmitted to a network. But Figure 1 merely provides a synopsis of the steps of the method and is not intended to be limiting.<sup>26</sup> Apple fails to identify any disclosure in the patents-in-suit that

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<sup>22</sup> Dkt. No. 4 at 6.

<sup>23</sup> Dkt. No. 1-1 at 2:41-43; Dkt. No. 1-2 at 2:38-40 (emphasis added).

<sup>24</sup> Dkt. No. 1-1 at 5:52-54 (emphasis added).

<sup>25</sup> Dkt. No. 1-2 at claims 19 and 20 (emphasis added).

<sup>26</sup> Dkt. No. 1-1 at 3:43-46; Dkt. No. 1-2 at 3:47-50.

expressly limits associating a direct access icon with only one address. In fact, Apple ignores the disclosures Allani cites suggesting that direct access icons are not necessarily associated with only one address.<sup>27</sup>

Apple’s argument that Allani’s proposed construction is inconsistent with the specification because the specification does not disclose systems that use a plurality of web servers or systems that involve intermediate steps is deliberately naive.<sup>28</sup> There is a reason the patents-in-suit are silent as to the underlying system architecture, including the number of servers and the number of intermediate steps involved in the claimed systems and methods. It is well settled that “‘a patent need not teach, and preferably omits, what is well known in the art.’”<sup>29</sup> As Dr. Polish testified, a POSITA would know that even when a client sends a request to a web site, that request may pass through proxy servers, routers, DNS resolution, and authentication layers.<sup>30</sup> These are transparent components of a typical HTTP request and do not negate the “direct” nature of the access from a functional perspective.<sup>31</sup> In fact, Dr. Polish agreed that the blank oval shown in Figure 1 of the ’877 patent represents components of the networking fabric.<sup>32</sup> Thus, contrary to what Apple claims, Allani’s construction is aligned with the patent and accounts for details of real-world systems that would be known to a POSITA.<sup>33</sup> Apple’s use of the term “directly,” on the other

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<sup>27</sup> Dkt. No. 23 at 14-15.

<sup>28</sup> Dkt. No. 24 at 7-8.

<sup>29</sup> See *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1261 (Fed. Cir. 2017) (quoting *Hybritech Inc. v. MonoclonalAntibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986)); see also *Atmel Corp. v. Info. Storage Devices*, 198 F.3d 1374, 1382 (Fed. Cir. 1999) (“ [Section 111 paragraph a] permits resort to material outside of the specification in order to satisfy the enablement portion of the statute because it makes no sense to encumber the specification of a patent with all the knowledge of the past concerning how to make and use the claimed invention.”).

<sup>30</sup> Ex. 10 at 35:21-37:2, 41:9:42:16, 43:20-45:23, 79:7-19; see also Dkt. No. 23-9 at ¶¶67-68.

<sup>31</sup> *Id.*

<sup>32</sup> Ex. 10 at 35:21-37:2, 41:9:42:16, 43:20-45:23, 79:7-19.

<sup>33</sup> Dkt. No. 23-9 at ¶73.

hand, creates confusion and risks excluding legitimate architectures where a request is relayed or routed through a standard infrastructure.<sup>34</sup> As such, Apple’s construction reads unduly narrow restrictions into the claims with no intrinsic support and should be rejected.

#### **5. “said address being locally generated”**

Apple erroneously states that Allani intends to argue that a “locally generated address” encompasses addresses that are generated elsewhere. Allani does not intend to argue that addresses not generated on the claimed device are covered by the claims. That is why Allani modifies its construction to read “said address being generated on the device.”

Allani, however, still disputes Apple’s attempt to change the meaning of the plain claim language by substituting the word “created” for the word “generated.” Apple’s use of the term “created” suggests that it later intends to argue that addresses must originate entirely on the claimed device. Apple fails to show how this interpretation is supported by the plain claim language or the specification. Dr. Polish even testified that how an address is created is outside the scope of the patents-in-suit.<sup>35</sup> Accordingly, Apple’s proposal to change the plain claim language should be rejected.

### **B. The ’058 Patent**

#### **1. “specifically designed to include”**

Allani contends that the term “specifically designed to include” should be construed to be “used to include,” meaning actually included. Apple agrees that “used to include” has that meaning and does not offer an alternative construction. Thus, it again appears that Apple does not dispute Allani’s interpretation of “specifically designed to include” itself.

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<sup>34</sup> *Id.* at ¶69.

<sup>35</sup> Ex. 10 at 133:2-16.

Apple’s contention that this term is indefinite because it impermissibly requires the subjective intent of the designer makes little sense in light of the file history of the patents-in-suit. Apple admits that the prosecution history is one of the most important pieces of evidence in interpreting claims.<sup>36</sup> Yet the prosecution history shows that the patentee did not intend to narrow the claims to mean that the claimed device must be both “capable of” including the recited structure and intended by the designer as Apple contends.<sup>37</sup> To avoid any confusion as to the narrower scope of the claims, the patentee argued this term “directly and explicitly requires ‘designed to’” and did not broadly encompass merely being “capable of.”<sup>38</sup> As the prosecution history shows, the term “specifically designed to include” does not reflect the patentee’s intent to capture the subjective intent of the designer but rather to limit the claim to a device that is designed and constructed to be used in a specific manner.<sup>39</sup> As such, the scope of the claim can be determined with reasonable certainty and is not indefinite.

Apple’s argument that it does not need extrinsic evidence to prove indefiniteness conflates the claim construction inquiry with the indefiniteness inquiry. Although extrinsic evidence is less relevant for the purposes of claim construction, that is not the case for indefiniteness under section 112. Apple quibbles with the magistrate’s report and recommendation in *Hand Held Prods., Inc. v. Amazon.com, Inc.*, in which the judge cited Amazon’s lack of expert testimony in rejecting Amazon’s indefiniteness arguments. But the district court judge adopted the magistrate’s reasoning.<sup>40</sup> The Federal Circuit also has upheld findings that claims were definite where the

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<sup>36</sup> Dkt. No. 24 at 9.

<sup>37</sup> *Id.* at 10.

<sup>38</sup> Dkt. No. 23-6 at 14.

<sup>39</sup> *Id.*; see also M.P.E.P. 2111.04.

<sup>40</sup> See *Hand Held Prods., Inc. v. Amazon.com*, Civil Action No. 12-768-RGA-MPT, 2014 U.S. Dist. LEXIS 156993 (D. Del. 2014).

accused infringer provided no evidence showing that a POSITA would not know the bounds of the disputed claims with reasonable certainty and therefore could overcome the clear meaning of the intrinsic record.<sup>41</sup>

Finally, Apple mischaracterizes the parties' meet and confer to narrow the claim terms in dispute as it pertains to this term. Allani specifically asked Apple its basis for asserting that "specifically designed to include" is indefinite given that it has not included the term in its invalidity contentions. Apple cannot merely provide updated invalidity contentions that include its indefiniteness positions without leave of Court because it cannot certify that "the amendment is based on material identified after those preliminary contentions were served."<sup>42</sup> Unless and until such leave is granted, the Court should not consider Apple's indefiniteness argument.

### **III. CONCLUSION**

In conclusion, Allani respectfully requests that the Court adopt Allani's claim constructions and reject Apple's proposed constructions.

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<sup>41</sup> See *Akzo Nobel Coatings, Inc. v. Dow Chem. Co.*, 811 F.3d 1334, 1345 (Fed. Cir. 2016).

<sup>42</sup> Dkt. No. 18 at n. 1.

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Respectfully submitted,

/s/ Lewis E. Hudnell, III

Lewis E. Hudnell, III

lewis@hudnelllaw.com

Stanley H. Thompson Jr.

stan@hudnelllaw.com

Hudnell Law Group P.C.

800 W. El Camino Real Suite 180

Mountain View, California 94040

T: 650.564.3698

F: 347.772.3034

**ATTORNEYS FOR PLAINTIFF  
FERID ALLANI**

**CERTIFICATE OF SERVICE**

I certify that on April 17, 2025 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Lewis E. Hudnell, III  
Lewis E. Hudnell, III