UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COGMEDIA LLC,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 1:25-cv-12127
	§	
v.	§	
	§	
META PLATFORMS, INC.,	§	
	§	
Defendant.	§	

PLAINTIFF'S OPENING CLAIM CONSTRUCTION BRIEF

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INTRODUCTION

The primary issue common across each of the terms (all set forth by Defendant) is whether there is any basis to depart from their plain and ordinary meaning as written. Under longstanding Federal Circuit precedent, claim terms are given their plain and ordinary meaning to a person of skill in the art at the time of the invention and when viewed in light of the specification, unless the patentee has 1) clearly acted as its own lexicographer or 2) unmistakably disavowed claim scope. Because neither exception to the general rule exists here, Plaintiff requests the Court do no more, and no less, than apply this bedrock principle and decline to impose Defendant's additional constructions.

Less than two months ago, Defendant filed three *inter partes* review petitions against the three patents at issue in this litigation. There, before the Patent Trial and Appeal Board, Defendant set forth ***zero*** terms for construction, implicitly accepting the claims are readily understood according to their plain and ordinary meaning. Yet on a parallel track before the District Court here, with the very same claims from the very same patents having the very same specifications, Defendant takes the position that ***eight*** claim terms must be construed (just short of the maximum ten terms permitted under Local Rule 16.6(e)). Having treated the claims as readily understandable without construction in the IPRs, the Court should be wary from the start of Defendant's litigation-inspired attempts to import additional, narrowing limitations into broader claim language.

Against that backdrop, Defendant's proposed constructions reveal an inherent tension. For all eight terms, Defendant's construction begins with "plain and ordinary meaning" before pivoting to advance its preferred definition. In doing so, Defendant invokes "plain and ordinary meaning" in name only, relying on its label but not its substance. Plain meaning does not require translation.

The underlying reason for Defendant's request is twofold. First, by labeling its constructions as "plain and ordinary meaning," Defendant seeks to evade the scrutiny that would

otherwise attach if it candidly presented only the substance of its constructions. If Defendant truly believes construction is warranted, it is required to justify a departure from plain and ordinary through lexicography or disavowal. Because it cannot demonstrate either exception, Defendant's invocation of "plain and ordinary meaning" while introducing its own narrowing limitations does not satisfy the very standard that would permit doing so.

Second, Defendant tries to narrow the claims at the *Markman* stage in a thinly-veiled attempt to preordain noninfringement and invalidity outcomes. By tailoring the claims in light of the accused products or prior art references, rather than the intrinsic record of the Patents-in-Suit, Defendant collapses the distinction between the two-step process of patent infringement and validity analysis (*i.e.*, construction followed by application), improperly seeking to force the Court's hand now to decide factual issues prematurely. Defendant's strategy runs contrary to the law and is not the purpose of claim construction.

I. GOVERNING LEGAL PRINCIPLES FRAMING THE COURT'S ANALYSIS

While some *Markman* briefs begin with an overview of the technology, such an approach seems less warranted here. The Court is already well-versed in the patents' technology and Asserted Claims by virtue of the extensive briefing filed in connection with Defendant's Motion to Dismiss. Dkt. Nos. 35 and 42; *see also* Order denying at Dkt. No. 55. But more to the point, the terms at issue (terms such as "vote", "copy", "send", or "comment") are non-technical and readily understood in their ordinary usage. For this reason, the issues presented to the Court are largely legal in nature and turn on the proper application of claim construction principles rather than deeper technical exposition.

A. Plain and Ordinary Meaning Applies Absent Lexicography or Clear Disavowal

With the focus properly on legal principles, the Court's analysis here begins with the foremost foundation of claim construction law. In *Phillips*, the Federal Circuit reaffirmed the

longstanding principle that "the claims of a patent define the invention to which the patentee is entitled the right to exclude" and the words used in a claim are generally given their plain and ordinary meaning.[1] *Phillips v. AWH Corporation,* 415 F.3d 1303, 1313 (Fed. Cir. 2005) (*en banc*). The plain and ordinary meaning of a claim term is the meaning the term would have to a person of ordinary skill in the art at the time of the invention and in the context of the specification and the prosecution history. *Id.* at 1312-1313. When considering the meaning of words in a claim, a court first looks to the intrinsic evidence of record, i.e., the claims and specification. *Id.* at 1312-17. A patent's specification "is the single best guide to the meaning of the disputed term." *Id.* at 1315. But while the claims must be read in the context of the specification, courts must not read limitations from the specification into the claims. *Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1373 (Fed. Cir. 2007).

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." *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). These exceptions are narrow and well-defined. "A patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history." *Swissdigital USA Co. v. Samsonite Grp., S.A.*, 2026 U.S. Dist. LEXIS 65783, at *15 (D. Mass. Mar. 27, 2026), *citing Alnylam Pharms., Inc. v. Moderna, Inc.*, 138 F.4th 1326, 1333 (Fed. Cir. 2025). But to be clear, this intrinsic evidence must "put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term" and a patentee cannot "simply

[1] For the Court's ease of reference, the three Patents-in-Suit are attached as Exhibits 1-3 to the Declaration of Dave R. Gunter submitted concurrently herewith.

disclose a single embodiment or use a word in the same manner in all embodiments" and must instead "clearly express an intent to redefine the term." *Id*., *citing Bell Atl. Network Servs., Inc. v. Covad Commc'ns Grp., Inc.*, 262 F.3d 1258, 1268 (Fed. Cir. 2001) and *Thorner*, 669 F.3d at 1365. "The standard for disavowal of claim scope is similarly exacting." *Id*. at 1366. Disavowal must be "clear and unmistakable" and is not present when the alleged disavowal is ambiguous or even amenable to multiple reasonable interpretations. *Biogen Idec, Inc. v. GlaxoSmithKline LLC*, 713 F.3d 1090, 1095 (Fed. Cir. 2013); *Andersen*, 474 F.3d at 1373 (oft-quoted Federal Circuit opinion confirming plain and ordinary meaning applies "absent a clear disclaimer of claim scope").

B. No Construction Necessary When Plain and Ordinary Meaning Suffices

If neither exception to the general rule applies, courts are instructed not to engage in needless construction, rewriting, or redefining words. As the Federal Circuit has continually recognized, a district court does not err by declining to construe a claim term in favor of maintaining its plain and ordinary meaning as written. *See, e.g.*, *Summit 6, LLC v. Samsung Elecs. Co., Ltd.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015). Instead, the starting point of the claim construction process is also the ending point, and the court should hold that the term at issue simply carries its plain and ordinary meaning without further construction. *Thorner*, at 1366 ("[W]e do not redefine words. Only the patentee can do that."); *see also*, *O2 Micro Intl Ltd. v. Beyond Innovation Tech Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008) ("[A] district court is not obligated to construe terms with ordinary meanings, lest trial court be inundated with requests to parse the meaning of every word in the asserted claims.").

Courts in this District have routinely upheld the practice of declining construction for terms in favor of holding that the "plain and ordinary meaning" should remain in place. *See, e.g.*, *Allen Med. Sys. v. Schuerch Corp.*, 2020 U.S. Dist. LEXIS 112970 (D. Mass. June 26, 2020) (declining defendant's attempts to define multiple claim terms and instead holding each term "will be

accorded its plain and ordinary meaning" with no further construction necessary); *see also Swissdigital USA Co., v. Samsonite Grp., S.A.*, 2026 U.S. Dist. LEXIS 65783 (D. Mass. Mar. 27, 2026) (recognizing instances of clear disavowal for certain terms, such as statements and amendments to claims to overcome prior art, but declining construction and maintaining an adoption of "plain and ordinary" for other terms that did not include similarly limiting statements).

C. Application of *O2 Micro* Does Not Alter the Governing Plain and Ordinary Meaning Standard

As a final point before turning to the merits of the eight claim terms, Defendant's assertion of "plain and ordinary meaning" coupled with its proposed narrowing definitions suggests an anticipated argument that must first be addressed. Specifically, Defendant's approach telegraphs its intent to manufacture a so-called dispute over the scope of the claim terms through introduction of unnecessary and unsupported definitions. By setting forth narrowing definitions, Defendant will attempt to invoke the Federal Circuit's decision in *O2 Micro* as a basis for what it will characterize to the Court here as a disagreement between the parties as to the plain and ordinary meaning of the terms. And, because Plaintiff does not agree to the narrowing definitions, Defendant will couch this disagreement as necessitating a mandatory construction by the Court.

The Court should guard against being led down the primrose path of such an argument. *O2 Micro* is often misread to suggest that the mere existence of a so-called dispute necessarily compels the Court to provide an affirmative construction as opposed to holding the plain and ordinary meaning controls with no further construction. It does not. Even in the language of *O2 Micro* itself, the Federal Circuit was deliberate in its instruction that "district courts are not (and should not be) required to construe every limitation present in a patent's asserted claims" and claim construction "is not an obligatory exercise in redundancy." *O2 Micro*, 521 F.3d at 1312.

The Federal Circuit has revisited this very concept in the years after *O2 Micro*. In *Finjan*, the defendant on appeal argued (citing *O2 Micro*) that the district court erred because it "shirked" its responsibility to construe a disputed term by simply adopting "plain and ordinary meaning." *Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1207 (Fed. Cir. 2010). The Federal Circuit explicitly rejected this line of argument, noting that the district court's rejection of the defendant's construction in favor of an adoption of plain and ordinary meaning did in fact resolve the dispute amongst the parties. As the Court explained, rejecting a defendant's overly narrow construction in favor of maintaining plain and ordinary meaning ***is the resolution*** of the disagreement between the parties. *Id*. The Federal Circuit concluded the district court had indeed performed the correct analysis, observing "the defendant's proposed construction would unjustifiably narrow the term's broad scope, which was not explicitly limited or redefined by the specification." *Id*., referring to the *Markman* Order at *Finjan Software, Ltd. v. Secure Computing Corp.*, 2007 U.S. Dist. LEXIS 100215, at *3-4 (D. Del. Dec. 11, 2007). In other words, the district court found neither lexicography nor disavowal supported the more narrowing limitation advanced by defendant, and thus the term should be properly afforded its plain and ordinary meaning with no further construction necessary. The Federal Circuit concluded "[i]n this situation, the district court was not obligated to provide additional guidance to the jury." *Id*.

In *Summit 6*, the Federal Circuit confirmed yet again that it is not reversible error for a district court to hold plain and ordinary meaning in lieu of a construction even where a dispute arises during claim construction:

> At the claim construction stage, the district court rejected Samsung's argument that ongoing activity is required—the heart of the parties' disagreement—and declined to further construe the term because it was a "straightforward term" that required no construction. "Being provided to" is comprised of commonly used terms; each is used in common parlance and has no special meaning in the art. Because the plain and ordinary meaning of the disputed claim language is clear, the district court did not err by declining to construe the claim term.

Summit 6, LLC v. Samsung Elecs., Co., 802 F.3d 1283, 1291 (Fed. Cir. 2015), *citing O2 Micro*.

This is all consistent with how courts within this District have interpreted *O2 Micro*. For example, in declining to construe the term "covering comprising", this Court's holding in *Body Science* succinctly stated:

> Furthermore, while it is undoubtedly the role of the court to construe the claims of a patent, it need not adopt a construction that is different from the words of the patent itself. As noted, the Court is not required to provide additional language construing a claim if its ordinary meaning can be readily understood by a layperson and adopting it would resolve the parties' dispute concerning interpretation. *See O2 Micro*, 521 F.3d at 1361. Those conditions are clearly met here.

In re Body Sci. LLC Patent Litig., 2014 U.S. Dist. LEXIS 148160, at *29-30 (D. Mass. Oct. 17, 2014). And the District of Massachusetts is not alone in its reading of *O2 Micro*. *See, e.g.*, *QPSX Devs. 5 Pty Ltd. v. Ciena Corp.*, 2011 U.S. Dist. LEXIS 32290, at *14 (E.D. Tex. Mar. 28, 2011) ("In *Finjan*, the Federal Circuit confirmed that a court can resolve a claim construction dispute by rejecting a narrow claim construction and concluding that no additional construction is required … [i]n short, courts are free to reject overly narrow constructions and rely instead on the plain and ordinary meaning of the claim language."); *Diamondback Firearms, LLC v. Saeilo, Inc.*, 2014 U.S. Dist. LEXIS 16840, *11-13 (M.D. Fla. Feb. 6, 2014) (citing *O2 Micro* while adopting plain and ordinary meaning, rejecting narrowing limitations having no intrinsic or extrinsic support).

In light of the above, this Court's recent decision in *Swissdigital* provides a useful roadmap of the claim construction process that Plaintiff will apply in its analysis of each term below. *Swissdigital*, 2026 U.S. Dist. LEXIS 65783 (D. Mass. Mar. 27, 2026). Namely, start with the plain and ordinary meaning as written, review the claims in light of the intrinsic evidence to determine whether the evidence rises to the level of lexicography and disavowal, and absent the necessary showing of either, reject Defendant's narrowing proposals.

II. ANALYSIS

A. "at least one computer initiates execution of software instructions to perform computer processes"

Plaintiff's Proposal	Defendant's Proposal
plain and ordinary meaning; no construction necessary	plain and ordinary meaning, which is "at least one computer initiates execution of software instructions [residing on the at least one computer] to perform computer processes"

Beginning with the first term, Defendant's proposal reproduces the claim language found in the preambles of the Asserted Claims but then inserts its own additional limitation in brackets. The bracketed language asks the Court to construe each preamble to require software instructions "residing on the at least one computer." Defendant's proposal is not an attempt to give meaning to the claimed phrase, rather it is adding words the patentee did not choose and the intrinsic record does not require. *See, e.g.*, *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1348 (Fed. Cir. 2002) ("[i]nterpreting what is ***meant*** by a word ***in*** a claim is not the be confused with adding an extraneous limitation appearing in the specification, which is improper.") (emphasis in original).

The remainder of the language used in the Asserted Claims does not require, or in any way limit, the location or residence of the "software instructions." The concept of a so-called "residence" is likewise not limited by disclosures found within the intrinsic record. The specification does not use the word "residence" at all. Instead, the specification speaks in non-limiting terms, describing generally how embodiments of the invention "include software programs to perform the steps and operations[.]" '371 Patent, Col. 6, ll. 37-62. In fact, the specification states "[e]mbodiments of the invention include any type of computerized device, workstation, handheld or laptop computer, or the like configured with software and/or circuity (e.g., a processor) to process any or all of the method operations herein." *Id*. at Col. 6, ll. 30-33.

This language is the opposite of a limiting disclosure (much less disavowal) and, if anything, suggests the software may be on any type of computer devices. The focus in the specification is on the breadth of the types of computer devices that can be used rather than any one specific location where the software instructions must reside. This is further evidenced by the specification's use of "system" verbiage when describing the components and interactions found within preferred embodiments. *See id*. at Col. 5, ll. 24-46 (repeatedly characterizing embodiments as "systems" among groups of participants comprised of processors, memories, and applications for providing "a computational environment for the support of individual and collaborative decision-making[.]"); Col. 7, l. 54 through Col. 8, l. 13 (explaining "example embodiments" using local area networks that interconnect computer systems). Many of the Figures likewise contemplate "network environments", for example, cutting against Defendant's argument that the embodiments be limited to a single residence of software. *See* Figure 1 and Col. 7, ll. 8-10.

Lacking lexicography or disavowal, the remaining rationale behind Defendant's insertion appears to be related to its failed Motion to Dismiss based on joint infringement or other theories of non-infringement.[2] To the extent Defendant believes this insertion will help it in an attempt to reargue its positions, the claim construction process is not the time to "resolve questions that do not go to claim scope, but instead go to infringement or attorney argument." *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318-19 (Fed. Cir. 2016).

B. "vote function"

Plaintiff's Proposal	Defendant's Proposal
plain and ordinary meaning; no construction necessary	plain and ordinary meaning, which is "function that expresses a decision"

[2] Unlike the procedures set forth by some courts, the Local Rules here do not require the exchange of intrinsic and extrinsic support citations leading up to the filing of Opening Briefs. Accordingly, Plaintiff has endeavored to address Defendant's anticipated arguments based on its proposed constructions disclosed to date.

Defendant continues the same trend with this term, simultaneously asking the Court to apply the claims as written while rewriting them in different words. This time Defendant asks the Court to insert "function that expresses a decision" in place of the claimed "vote function." Yet again, Defendant can cite to no exception to the general rule that would provide justification from construing an ordinary English word to mean anything other than exactly what it already says. *See Rasmussen Instruments, LLC v. DePuy Synthes Prods.*, 568 F. Supp. 3d 117, 134 (D. Mass. 2021) (stating that terms which are not technical terms of art do not require elaborate interpretation), *citing Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001).

Looking at the claims themselves (again the starting point and primary source for determining the meaning of a term), "vote function" appears in each independent claim:

- "a vote function, by which users having access to the card vote function can vote for the card, such votes being associated with the information object represented by the card" ('371 Patent, Claims 1, 15; '141 Patent, Claims 1, 17);
- "a vote function, by which each user having access to the card can provide one vote for the information object" ('562 Patent, Claim 1).

In each instance, the claims themselves set forth a clear description of the "vote function" as allowing users to vote for cards they have access to. The language used in the claims as written should be considered dispositive absent lexicography or disavowal. Neither is found here. In fact, the specification's description of preferred embodiments having the claimed "vote function" is entirely consistent with its plain and ordinary meaning ('371 Patent, Col. 10, ll. 33-39):

> "A vote function allows collaborating users to exchange their opinions about the relevance of IOs. Every user is given one supporting vote for each card (TO). The icon color indicates the addition of recent and the presence of past votes. The numerical counter next to the icon displays the total number of supporting votes."

Elsewhere, the specification describes how a user "adds a comment or a vote to another user's card" and such interaction may be considered by the system's algorithms. '371 Patent, Col. 22, ll.

8-15. The specification does not require the vote function to be construed as a "function that expresses a decision." To the contrary, the specification refers to a "vote function" allowing users to "exchange their opinions[.]" '371 Patent, Col. 10, ll. 33-35. And while it would be improper to incorporate a preferred embodiment into broader claim language absent lexicography or disclaimer, there is not even a preferred embodiment that uses the "express a decision" language set forth in Defendant's proposal. At best, Defendant's addition of the "decision" verbiage adds confusion, rather than clarity. Does that refer to a yes/no, up/down, option (a) versus option (b), agree/disagree? What, if any or if all, of those options fall within its proposed "decision"? And, more importantly, how and why is that different than the plain language already used in the claim? *See, e.g.*, *Sunrise Techs., Inc. v. Cimcon Lighting*, 280 F. Supp. 3d 238, 244 (D. Mass. Nov. 22, 2017) (rejecting construction of a term that contributed "nothing but meaningless verbiage"). The claim language is readily understandable, including when it is read in light of the intrinsic record. Rewriting it serves no purpose other than to narrow its meaning, or introduce confusion, or both.

C. "replicate function" / "copy function"

Plaintiff's Proposal	Defendant's Proposal
plain and ordinary meaning; no construction necessary	plain and ordinary meaning, which is "function that duplicates"

Here, Defendant has bundled two claim terms together ("replicate function" and "copy function") and requested a single definition ("function that duplicates") be applied to both. The same analysis, resulting in the same conclusion, as applied with the above terms may be used here. The claim language controls and these terms are already clear on their face and the Court need not rewrite them:

- "a replicate function, by which each user having access to the card in a first collection of cards can cause the card to be replicated in a second collection of cards" ('562 Patent, Claim 1);

- "a copy function, by which users having access to the card copy function in a first collection of cards of a first user can cause the card to appear in a second collection of cards of a second user" ('371 Patent, Claims 1, 15);

- "a copy function, by which users having access to the card copy function in a first collection of cards can cause the card to appear in a second collection of cards" ('141 Patent, Claims 1, 17).

Turning to the specification, while the word "replicate" is not used, the concepts of replicating and copying are discussed at length. In fact, the word "copy" is used throughout, but not in a manner indicative of lexicography or disavowal. In one embodiment of Figure 1, a user may "copy IOs 320 from the News View 305, the database view 310 or the exchange view 315." '371 Patent, Col. 12, ll. 52-57. A user is described as being able to copy "to the computer desktop or file system (and vice versa) thus converting IOs 320 into regular computer files." *Id*. at ll. 54-57. Rather than limiting the term "copy", the specification states "[t]his functionality has a variety of applications such as to exchange IOs 320 by email or to convert IOs 320 for use with other software applications." *Id*. at ll. 57-59. The specification doesn't end there, as other (non-limiting) preferred embodiments are enumerated. *Id*. at ll. 60-65 (describing file system or path or URL or database identifiers); Col. 14, ll. 28-34 (setting forth preferred embodiments wherein copied IOs may be static and not change and also dynamically adapt to modifications). "Copy" is also used in certain preferred embodiments in the context of copying "relevant information" as opposed to a totality of information. *Id*. at ll. 60-65. And copying between users is found not only in the specification, but highlighted in various Figures. *See, e.g.*, Figures 5A and 5B (diagrams of IOs being exchanged between different users).

Notably, the specification ***never uses the word "duplicate."*** If anything, given the broad disclosures provided above, "duplication" is, at most, only one way to implement the functionality defined in the claim. The same question asked above applies again here: why should the patentee's words ("replicate" and "copy") be replaced by the Defendant's choice of "duplicate"? A "patentee

is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning." *Actifio, Inc. v. Delphix Corp.*, 150 F. Supp. 3d 117, 127 (D. Mass. 2015), *citing Thorner*, 669 F.3d at 1367-68. The claim language, particularly when read in the context of the specification and its broad disclosure of embodiments, means Defendant's proposal must be rejected. *See, e.g.*, *Electro Med. Sys., S.A. v. Cooper Life Scis., Inc.*, 34 F.3d 1048, 1054 (Fed. Cir. 1994) ("particular embodiments appearing in a specification will not be read into the claims when the claim language is broader than such embodiments.") (internal citation omitted); *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014) ("[w]hile we read claims in view of the specification, of which they are a part, we do not read limitations from the embodiments in the specification into the claims.") (internal citation omitted).

D. "send command"

Plaintiff's Proposal	Defendant's Proposal
plain and ordinary meaning; no construction necessary	plain and ordinary meaning, which is "transmit command"

The term "send command" appears in various dependent claims of each Patent-in-Suit ('371 Patent, Claims 7, 22; '562 Patent, Claim 13; '141 Patent, Claim 7). Taking Claim 7 of the '371 Patent as an example, it is claimed that "responsive to … a send command… causing the selected card to be sent to the second user, so that the selected card in the collection of the first user is made available to the second user to be included in the collection of the second user." As with the above terms, the word "send" is a common word used in regular English parlance and should be afforded its plain and ordinary meaning.

The use of the word "send" in the specification is entirely in line with the plain and ordinary meaning as used in the claims. Take, for example, the statement: "An IO can simply be dragged

and dropped onto a user icon which subsequently ***sends a copy*** of this IO to the intended recipient." '371 Patent, Col. 24, ll. 52-55 (emphasis added).

To the contrary, the word "transmit" (Defendant's proposed construction) is not used a single time in the claims or the specification. What is set forth instead, again in non-limiting fashion, is a variety of preferred embodiments allowing users to exchange information objects ('371 Patent, Col. 17, ll. 52-67):

> There are various ways in which IOs [information objects] can be exchanged between the IVs [information views] of the same and of different users such as:
>
> by copying IOs from the personal IV of another user (Users can make their personal IVs accessible to other users. An IV can be Shared 510 (read/write), Visible 512 (read) or Private 514);
>
> by sending IOs to a particular user or group of users through the integrated instant messaging system or a commercial instant messaging system;
>
> by sending IOs to a particular user or group of users through email;
>
> by making IOs available through shared file systems; and
>
> by retrieving IOs from our database (the database automatically collects and organizes IOs form the IVs of different users.

While the words "copy" and "send" are used in the above examples, there is nothing to suggest that the word "send" must be assigned the meaning "transmittal" or that "send" should have the exclusive domain of topics related to sharing information objects between users. To the contrary, as discussed above, the specification uses explicit language when discussing the "copy" term that references "email" and "use with other software applications." Col. 12, ll. 52-59.

During the Parties' meet and confer required under Local Rule 16.6(e), it became evident that Defendant's motive for construction of this term was slightly different than the other terms. Namely, Defendant believes its construction is necessary to differentiate the meaning of "send command" from the meaning given to the above "replicate" and "copy" commands. Defendant's

argument appeared to be based on its interpretation of the doctrine of claim differentiation. But in doing so, Defendant seems to be taking an overly strict interpretation, belied by its own position with respect to the terms immediately above (assigning the same meaning to "replicate" and "copy"). Further, Defendant's swapping out "transmit" in place of "send" does nothing to alleviate its so-called concern. The claims already use different words as written. There is simply no reason, compelled by either the claims or the specification, to rewrite the claims as Defendant proposes.

E. "instant messaging function"

Plaintiff's Proposal	Defendant's Proposal
plain and ordinary meaning; no construction necessary	plain and ordinary meaning, which is "realtime communication function"

The term "instant messaging function" is yet another example of a term that is fully set forth in the claims as written and should be given its plain and ordinary meaning. Take, for example, Claim 1 of the '562 Patent: "an instant messaging function, by which users having access to the card can exchange author- and time-stamped messages relating to the information object, such messages being associated with the information object and accessible to users who view the information object[.]" The claim as written requires the ability to exchange author and time-stamped messages, but is not limited to "realtime communication" as Defendant asserts.

There are some contexts other than this case in which "instant messaging" may be used to refer to a type of synchronous computer-mediated communication involving the immediate (real-time) transmission of messages. However, the intrinsic evidence here clarifies that "instant messaging function" for purposes of the Patents-in-Suit is broader, covering communications that are neither synchronous nor "real-time." The specification provides: "It is noted that the instant messaging system includes communication media ***such as*** Instant Messaging System, ***email*** and SMS messaging, text messaging and other forms of real-time communication between

participants." '562 Patent, Col. 5, ll. 61-65 (emphasis added). This disclosure does not rise to the level of lexicography, nor does it constitute a clear disavowal. To the contrary, it is non-limiting ("such as") and lists exemplary types of communications, including asynchronous communications that are not considered "real-time" communications (e.g., email) that qualify under the plain reading of the claim language (exchanging author and time stamped messages).

As discussed, the Federal Circuit requires the consideration of claim language in light of the specification. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 11576, 1582 (Fed. Cir. 1996). Here, there can be no debate that the inclusion of "email" in the specification's foregoing discussion of the instant messaging function is a reference to a communication function that is not "real-time." Unlike other types of communications (e.g., phone calls), email allows for delays between sending, receiving, and responding. Moreover, email is not delivered directly peer-to-peer, it instead sits in a mailbox waiting for retrieval. There is no expectation of an immediate (real-time) response. For these reasons, Defendant's proffered construction of "realtime" is an invitation to the Court to commit reversible error. In addition, a construction embracing "real-time communications" would exclude one of the inventor's preferred embodiments (email) and a construction that is at odds with a preferred embodiment of the invention is "rarely, if ever, correct." *Vitronics* at 1583.

F. "comment function"

Plaintiff's Proposal	Defendant's Proposal
plain and ordinary meaning; no construction necessary	plain and ordinary meaning, which is "function that allows a user to remark or annotate"

The claims of the '371 Patent and '141 Patent use the term "comment function." Similar to "vote function" and "copy function" discussed above, "comment function" is a non-technical

term used in its common parlance, with a clear description of the term already present in the claims as written:

- "a comment function, by which users having access to the card comment function can exchange comments relating to the card, such comments being associated with the information object represented by the card" ('371 Patent, Claims 1, 15; '141 Patent, Claims 1, 17).

The specification is ripe with discussion of "comment" and void of any mention of "remark." The word "annotate" likewise does not appear anywhere in the specification. In the single instance of the word "annotations", such disclosure in no way qualifies as either of the lexicography or disavowal exceptions: "A comment function allows for the addition of comments and annotations." '141 Patent, Col. 10, ll. 32-33. If anything, this is one preferred embodiment and would be reversible error to incorporate the requirement of "annotation" into the claims. *See, e.g., Thorner*, 669 F.3d 1362 at 1369.

This Court's decision in *Kenexa* succinctly states the proper conclusion here: "Again, if the ordinary meaning of a term can be readily understood by a layperson and adopting it would resolve the parties' dispute concerning interpretation, there is no requirement that a court provide additional language construing a claim." *Kenexa BrassRing, inc. v. HireAbility.com, LLC*, 59 F. Supp. 3d 206, 221 (D. Mass. 2014) (citing *O2 Micro* and adopting "plain and ordinary meaning" with no construction necessary for the term "user").

G. "user-entered command"

Plaintiff's Proposal	Defendant's Proposal
plain and ordinary meaning; no construction necessary	plain and ordinary meaning, which is "textual command entered by a user"

In rewriting the claims to require "textual command[s]", Defendant's purported characterization of explanation is once again, in reality, a restriction that goes beyond the plain and ordinary meaning of the term. While the term "user-entered command" is found in multiple

dependent claims of all three Patents-in-Suit ('371 Patent, Claims 8-10, 23-25; '562 Patent, Claims 14-15, 17, 19; '141 Patent, Claims 8-10, 25-27), none of those claims limit the commands to those entered via "textual commands." Nor is there any indication in the specification that the patentee acted as his own lexicographer or otherwise disavowed claim scope to only cover "textual commands." The phrase "textual command" is never even used.

To the contrary, the specification includes numerous examples of input ***other than*** "textual commands." Embodiments that utilize "drag and drop" or other variations of that phrase appear over three dozen times throughout the specification. *See, e.g.*, '562 Patent at Col. 10, ll. 59-62; Col. 12, ll. 35-39; Col. 24, ll. 48-52. Similarly, the terms "click", "clicking" and "mouse-click" are disclosed. *Id*. at Col. 14, ll. 5-7; ll. 47-49; Col. 22, ll. 54-56. These embodiments would be precluded under Defendant's proposed construction and should therefore be denied. *See, e.g.*, *Sunrise Techs., Inc. v. Cimcon Lighting*, 280 F. Supp. 3d 238, 243 (D. Mass. 2017) (declining to construe the term "employs a ZigBee protocol to communicate outside the target zone" and instead holding "no construction is needed" based on the presence of embodiments in the specification that contradicted defendant's proposal).

H. "displaying … a first view … and also displaying … a second view"

Plaintiff's Proposal	Defendant's Proposal
plain and ordinary meaning; no construction necessary	plain and ordinary meaning, which is "displaying a first view and second view at the same time"

The last term brings the parties full circle. As with every term before it, Defendant professes to apply "plain and ordinary meaning" to the last term but instead advances a narrowed, rewritten version of the claim language. This time, the limiting language is "at the same time," which is a restriction not set forth in the claim language itself. Rather than proposing this construction on the ground of lexicography or disavowal (because it cannot), Defendant advances

a litigation-inspired construction that would, if adopted, allow it a potential non-infringement position only available under its rewriting of the claim.

To elaborate further, the relevant claim language, found in only certain dependent claims, is produced below and notably lacks any requirement of "at the same time" as Defendant seeks in its construction:

- "displaying in a computing device of a first user, a first view of a first set of cards that constitute a first collection of the first user; and also displaying in the computing device of the first user, and second view of a second set of cards that constitute a collection of a second user" ('371 Patent, Claims 5, 20);

- "displaying in a computing device of a first user, a first view of a first set of cards that constitute a first collection of the first user; also displaying in the computing device of the first user, and second view of a second set of cards that constitute a collection of a second user" ('141 Patent, Claim 5).

Here, the claims simply recite the capability of displaying a first view and a second view. There is no requirement that the two displays be simultaneous. Nor is "simultaneous" a part of the plain and ordinary meaning of the claim language at issue. This is further confirmed by the other dependent claims' usage of first and second view terms. For example, in Claim 6 of the '371 Patent, a copy command causes "the selected card to be copied from the second view to the first view, so that the selected card in the collection of the second user appears in the first collection of the first user." Again, no requirement of display "at the same time." And turning to the specification, the word "view" is used in excess of two hundred and fifty times, none of which indicate that the user was acting as his own lexicographer or otherwise limiting claim scope to only simultaneous viewing of the two displays. Moreover, the Figures use non-limiting language when it comes to the concept of displaying in views. *See, e.g.*, Fig. 11 at 1140 ("Display the information object in one of a plurality of views"). Defendant's narrowing rewrite should be rejected.

I. Extrinsic Evidence

As a final point, in addition to considering the intrinsic record, a court may resort to extrinsic evidence, such as expert testimony, to confirm a construction is consistent with the intrinsic evidence. *See Markman v. Westview Instruments, Inc.,* 52 F.3d 967, 987 (Fed. Cir. 1995) (*en banc*), *aff'd,* 517 U.S. 370 (1996); *see also Phillips*, 415 F.3d at 1317. That being said, reliance on extrinsic evidence is improper where the intrinsic record unambiguously describes the scope of the patent. *See Vitronics*, 90 F.3d at 1583. Plaintiff is submitting herewith the expert Declaration of Daniel Engels, Ph.D., not in an attempt to rewrite or displace the intrinsic record, but to confirm that the claims are readily understood by one skilled in the art as they are already written and when viewed in light of the intrinsic record, and no further construction is necessary. Plaintiff reserves all rights to submit additional expert testimony in rebuttal to any testimony identified in Defendant's Opening Brief.

CONCLUSION

Defendant's shifting approach to claim construction here, as compared to its comparatively simple "plain meaning" (without further elaboration) positions taken in its IPR petitions, reveals the absence of any genuine dispute over meaning. Defendant now seeks to recast the same terms in this Court, not because the intrinsic record demands it, but because its litigation posture does. For the reasons set forth herein, Plaintiff respectfully requests all identified claim terms be given their plain and ordinary meaning with no further construction required.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Plaintiff respectfully requests oral argument.

Date: May 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May 2026, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court for the District of Massachusetts using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Jonathan T. Suder