

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES - GENERAL**

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**CASE NO.:** SA CV 13-00657 SJO (JPRx) **DATE:** June 18, 2014

**TITLE:** AutoAlert, Inc. v. DealerSocket, Inc.

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**PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE**

Victor Paul Cruz  
Courtroom Clerk

Not Present  
Court Reporter

**COUNSEL PRESENT FOR PLAINTIFF(S):** **COUNSEL PRESENT FOR DEFENDANT(S):**

Not Present

Not Present

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**PROCEEDINGS (in chambers): ORDER CONSTRUING CLAIM TERMS FOLLOWING  
MARKMAN HEARING [Docket No. 131]**

This matter is before the Court on Plaintiff AutoAlert, Inc.'s ("Plaintiff") Updated Opening Claim Construction Brief ("Plaintiff's Brief"), filed on April 21, 2014. (ECF No. 131.) On May 5, 2014, Defendant DealerSocket, Inc. ("Defendant") submitted a Responsive Claim Construction Brief ("Defendant's Brief," ECF No. 134), to which Plaintiff filed a Reply on May 19, 2014 (ECF No. 147). The Court held a *Markman* hearing on June 2, 2014. (ECF No. 178.)

**I. FACTUAL AND PROCEDURAL HISTORY**

Plaintiff and Defendant are competitors, both providing software designed to help car dealers manage inventory and generate sales leads. (Redacted Order Denying Pl.'s Mot. for Prelim. Inj. ("PI Order") 1-2, ECF No. 96.) On April 25, 2013, Plaintiff brought suit against Defendant, asserting that RevenueRadar, Defendant's lead generation subscription service, infringes five of Plaintiff's patents: U.S. Patent Nos. 7,827,099 ("the '099 Patent"); 8,005,752 ("the '752 Patent"); 8,086,529 ("the '529 Patent"); 8,095,461 ("the '461 Patent"); and 8,396,791 ("the '791 Patent") (collectively, "Asserted Patents"). (See *generally* Compl., ECF No. 1; see *also* First Am. Compl. ("FAC"), ECF No. 51.)

The application for the '099 Patent was filed on November 23, 2004, and the patent was issued on November 2, 2010. The remaining four patents were issued from continuation applications from the '099 Patent, with the application for the '752 Patent filed on October 25, 2004; the applications for the '529 and '461 Patents filed on March 30, 2011, with associated Petitions to Make Special under Accelerated Examinations; and the application for the '791 Patent filed on November 17, 2011. All five patents are titled "System and Method for Assessing and Managing Financial Transactions," and the five patents share a common patent specification. The Asserted Patents are all by the same inventor and contain a total of 95 claims, 12 of which are independent claims. (See *generally* Compl., Exs. A-E.)

AutoAlert Exhibit 2001  
DealerSocket v.  
AutoAlert  
CBM2014-00139

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The Patents' Abstracts all describe the invention as follows:

A financial terms alert generation system comprises an information retrieval module, a financial terms comparison module, and an alert transmission module. The information retrieval module is configured to retrieve financing information, customer information, and product information from one or more sources accessible on a network. The financial terms comparison module is configured to compare a customer's current financial arrangement to a potential new financial arrangement to determine whether the customer is able to enter into a new financial arrangement on terms favorable to the customer. The alert transmission module is configured to transmit an alert to a dealer in cases in which the financial terms comparison module determines that a customer is able to enter into a new financial arrangement on terms favorable to the customer. Such alerts identify the customer and the favorable financial terms.

In short, the patents-at-suit are directed at computer implemented systems and methods that alert car dealers of opportunities to sell vehicles at favorable terms to pre-existing customers. The invention does this by allowing car dealers to compare the financing terms on a customer's current vehicle with the financing terms on a potential replacement vehicle. The calculation of financing terms on the potential replacement vehicle is based on the purchase price of the replacement vehicle, the customer's creditworthiness, and the estimated equity in the customer's existing car, which can be traded in for the replacement car.

On September 13, 2013, Plaintiff filed a motion seeking a preliminary injunction based on Defendant's alleged infringement of Claims 1 and 4 of the '791 Patent. (Mot. for Prelim. Inj., ECF No. 13.) The Court denied this motion because, inter alia, of questions concerning whether the patents claim patentable subject matter. (PI Order 5-9.)

At the February 3, 2014 Scheduling Conference ("Scheduling Conference"), the Court stated that it would construe only seven terms at the *Markman* hearing. (Scheduling Conf. Tr. 20:13-15, Feb. 3, 2014, ECF No. 100.) Because Plaintiff and Defendant disputed twelve terms on April 14, 2014, the day the Opening Claim Construction Brief ("Brief") was due, Plaintiff offered constructions for all twelve disputed terms in the Brief. (Brief 1-2, ECF No. 115.) In response, the Court issued an order striking Plaintiff's Brief and limiting the parties to a maximum of eight terms, with four terms selected by each party. (April 15, 2014 Min. Order, ECF No. 121.) The eight terms selected by the parties are: (1) alert; (2) message; (3) batch process; (4) in real-time; (5) if; (6) configuration request; (7) current information; and (8) different respective time periods. Defendant argues that the last three terms to be construed—configuration request, current information, and different respective time periods—are indefinite.

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**II. DISCUSSION**

Claim construction, the process of giving proper meaning to the claim language, is a question of law. *Chimie v. PPG Indus. Inc.*, 402 F.3d 1371, 1376 (Fed. Cir. 2005); see also *Lighting Ballast Control LLC v. Philips Elecs. N. Am. Corp.*, 744 F.3d 1272, 1276-77 (Fed. Cir. 2014). "Courts construe claim terms in order to assign a fixed, unambiguous, legally operative meaning to the claim." *Chimie*, 402 F.3d at 1377.

In claim construction, claim terms "are generally given their ordinary and customary meaning." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the application." *Id.* at 1313. "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.*

To determine the ordinary and customary meaning of a claim term, a court must "look[] to those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean," including "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Id.* at 1314 (internal citations and quotation marks omitted). This evidence, however, is not all of equal importance in the claim construction analysis. See *id.* at 1314-19; *Vitronics Corp. v. Conceptor, Inc.*, 90 F.3d 1576, 1582-84 (Fed. Cir. 1996). Rather, "[i]t is well-settled that . . . the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Vitronics*, 90 F.3d at 1582. This "intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language." *Id.*

"It is elementary that claim construction begins with, and remains focused on, the language of the claims." *Biagro W. Sales, Inc. v. Grow More, Inc.*, 423 F.3d 1296, 1302 (Fed. Cir. 2005). Thus, in construing claim terms, a court first "look[s] to the words of the claims themselves, both asserted and nonasserted . . . ." *Vitronics*, 90 F.3d at 1582. "[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms." *Phillips*, 415 F.3d at 1314. For instance, "the context in which a term is used in the asserted claim can be highly instructive" and often provides a "firm basis for construing the term." *Id.* In addition, "[o]ther claims of the patent in question, both asserted and unasserted, can . . . be valuable sources of enlightenment as to the meaning of a claim term" and "can often illuminate the meaning of the same term in other claims." *Id.* Similarly, "[d]ifferences among claims can . . . be a useful guide in understanding the meaning of particular claim terms," *id.*, as differences in claim terms "are presumed to reflect a difference in the scope of the claims," *Forest Labs., Inc. v. Abbott Labs.*, 239 F.3d 1305, 1310 (Fed. Cir. 2001).

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The claims should not be read in isolation but "must be read in view of the specification, of which they are a part." *Phillips*, 415 F.3d at 1315. Thus, after considering the claim language, the court must next look to the rest of the specification. *Vitronics*, 90 F.3d at 1582. The specification is "always highly relevant to the claim construction analysis" and "is the single best guide to the meaning of a disputed term." *Phillips*, 415 F.3d at 1315. Nevertheless, the court should not import limitations from the specification into the claims. See *ICU Med., Inc. v. Alaris Med. Sys., Inc.*, 558 F.3d 1368, 1375 (Fed. Cir. 2009); *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998). "In addition to consulting the specification, . . . a court should . . . consider the patent's prosecution history, if it is in evidence." *Phillips*, 415 F.3d at 1317; see *Vitronics*, 90 F.3d at 1582. The prosecution history "consists of the complete record of the proceedings before the PTO and includes the prior art cited during the examination of the patent." *Phillips*, 415 F.3d at 1317; see *Vitronics*, 90 F.3d at 1582. "Like the specification, the prosecution history provides evidence of how the PTO and the inventor understood the patent," which may "inform the meaning of the claim language." *Phillips*, 415 F.3d at 1317. Nevertheless, the prosecution history "often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Id.*

Courts may also rely on extrinsic evidence, "including expert and inventor testimony, dictionaries, and learned treatises." *Id.* Although extrinsic evidence may "shed useful light on the relevant art," it is "less significant" and "less reliable" than the intrinsic record in determining the legally operative meaning of a claim term. *Id.* at 1317-18. "A court should discount any expert testimony 'that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent.'" *Id.* at 1318 (citing *Key Pharm. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998)).

A court must also examine the intrinsic evidence "to determine whether the patentee has set forth an explicit definition of a term contrary to its ordinary meaning, has disclaimed subject matter, or has otherwise limited the scope of the claims." *Day Int'l, Inc. v. Reeves Bros., Inc.*, 260 F.3d 1343, 1348 (Fed. Cir. 2001). The doctrine of equivalents extends a patentee's "right to exclude beyond the patent claim's literal scope" to include a product or process that is "equivalent" or insubstantially different. *Johnson & Johnston Assocs. Inc. v. R.E. Serv. Co., Inc.*, 285 F.3d 1046, 1053 (Fed. Cir. 2002). But the doctrine of equivalents cannot "recapture subject matter deliberately left unclaimed." *Id.* at 1054. "[I]f one of ordinary skill in the art can understand the unclaimed disclosed teaching upon reading the written description, the alternative matter disclosed has been dedicated to the public." *PSC Computer Prods., Inc. v. Foxconn Int'l, Inc.*, 355 F.3d 1353, 1360 (Fed. Cir. 2004).

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**A. Alert**

Plaintiff's Proposal	Defendant's Proposal
Plain and ordinary meaning, or  A communication calling for attention.	A notification of condition satisfaction that identifies (1) a customer and (2) favorable financial terms on which the customer could exchange her current vehicle for a replacement vehicle.

The parties' dispute centers on whether an "alert" must identify a customer and the favorable financial terms on which the customer could exchange her current vehicle for a replacement vehicle. The disputed phrase occurs in a number of claims, including Claims 1, 2, 3, 8, 10, 13, and 15 of the '099 Patent; Claims 1, 3, 9, and 11 of the '752 Patent; Claim 19 of the '529 Patent; and Claim 15 of the '461 Patent.

Claim terms "are generally given their ordinary and customary meaning." *Phillips*, 415 F.3d at 1312. In ordinary use, the term "alert" is a communication calling for attention (Pl.'s Br. 7-8; see *also* Def.'s Br. 4), and need not always identify a customer or identify favorable financial terms related to that customer. Defendant argues that its narrower construction is justified because, without information as to what the alert is intended to communicate, the term is a "broad and amorphous non-technical term." (Def.'s Br. 4.) Defendant asserts that because the language of the claims does not describe what the claimed alert communicates, it is necessary to look to the written description to determine the scope of the term. (Def.'s Br. 4.) Defendant argues that throughout the specification, particularly in the Abstract and Summary of the Invention sections, the invention is uniformly described as having alerts that identify a customer and the favorable financial terms related to that customer. (Def.'s Br. 4-6.) Thus, Defendant argues these limitations "further reinforce the propriety of limiting 'alert' . . . to communications conveying that information." (Def.'s Br. 6.)

Considering the words of the claims themselves is the first step of claim construction. As discussed at the June 2 *Markman* hearing, the language supports giving the term "alert" its plain and ordinary meaning. Claim 1 of the '099 Patent describes:

A financial terms alert generation system comprising . . . an alert generation and transmission module configured, when it is determined that it is favorable to the customer to replace the first vehicle and the first financial terms with the second vehicle and the adjusted second financial terms, to generate for the dealer an alert comprising information identifying the customer, the customer's contact information, the first vehicle, the second vehicle, and the adjusted second financial terms and to transmit at least a notification



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of the alert to the dealer, wherein the alert comprises a deal sheet adapted to facilitate a replacement transaction in which the customer replaces the first vehicle with the second vehicle . . . .

('099 Patent 24:39, 25:37-48.) Thus, in Claim 1 of the '099 Patent, an alert communicates more than just the satisfaction of a condition, but also information identifying the customer, the relevant vehicles, and the favorable financial terms.

Many of the remaining claims do not, however, require that the alert itself identify the customer or the favorable financial terms. For example, Claim 8 of the '099 Patent describes "[a] method of providing an alert regarding a customer that has first financial terms for a first vehicle and that is able to enter into second financial terms for a second vehicle and that are favorable to the customer . . . ." ('099 Patent 26:42-45.) Claim 1 of the '752 Patent describes a system where an alert is automatically generated "if it is determined that the new payment satisfies the alert parameter," which is "based at least in part on [a customer's] first financial terms and the second financial terms." ('752 Patent 25:1-5.) Claim 19 of the '529 Patent and Claim 15 of the '461 Patent are both dependent claims that generate a message under similar circumstances, wherein the message is or comprises an alert. The alert described in Claim 19 is generated "if it is determined that the changed information may affect whether it is favorable for the customer to replace a first vehicle and first financial terms with a second vehicle and second financial terms," ('529 Patent 26:23-25), and for Claim 15, the alert is generated "if it is determined that the changed retrieved information may affect whether it is favorable for the customer to replace the first vehicle and first financial terms with the second vehicle and second financial terms" ('461 Patent 26:16-20).

For all of these claims, the term "alert" carries its plain and ordinary meaning—a communication calling for attention or, alternatively, alerting the recipient of something. The claims generate an alert when a given condition is satisfied, but that alert need not always convey the identity of the customer or the favorable financial terms. Thus, the words of the claims themselves supports Plaintiff's construction.

However, the analysis does not stop here. Claim terms are read in the context of the specification, which is "always highly relevant to the claim construction analysis." *Phillips*, 415 F.3d at 1315. Nonetheless, the court should not import limitations from the specification into the claims. See *ICU Med.*, 558 F.3d at 1375; *Renishaw*, 158 F.3d at 1248. Here, the specification also uses the term "alert" with the same ordinary meaning. For example, the specification teaches that "certain embodiments of the system may generate notifications or alerts, which may advantageously indicate a potential replacement agreement satisfies certain parameters that indicate that the potential replacement agreement has terms favorable to the customer." ('099 Patent 4:21-25.)

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The Court acknowledged at the *Markman* hearing that the specification sometimes describes the alerts as identifying the customer and the favorable financial terms. For example, the Abstract teaches:

The alert transmission module is configured to transmit an alert to a dealer in cases in which the financial terms comparison module determines that a customer is able to enter into a new financial arrangement on terms favorable to the customer. **Such alerts identify the customer and the favorable financial terms.**

Furthermore, a number of embodiments in the specification describe alerts that identify the customer and the terms of the favorable financial arrangement. (See, e.g., '099 Patent 2:20-24, 26-42, 53-59.) However, this is not universally true. The specification teaches that alerts "may advantageously indicate a potential replacement agreement satisfies certain parameters that indicate that the potential replacement agreement has terms favorable to the customer." ('099 Patent 4:22-25.) Here, the specification teaches that alerts may, but not must, indicate the favorable financial terms. Both the language of the claims and the language of the specification supports Plaintiff's broad construction of "alert."

Defendant nonetheless argues that an "alert" must identify a customer and the favorable financial terms on which the customer could exchange her current vehicle for a replacement vehicle. In making this argument, Defendant asserts that "alert" is so amorphous that it is necessary to import limitations from the specification to define the term. Defendant appears to assume that an alert must communicate "something about a potential replacement transaction" beyond the potential availability of such a transaction. (Def.'s Br. 4.) Thus, Defendant reasons that because certain claims do not describe the content of the alert, the Court must look to the specification to do so. Without more information as to the content of the alert, Defendant claims that anything, including the day's headlines or a stock quote, could serve as an alert in the claimed inventions. (Def.'s Br. 4.) The purpose of an alert is to give the recipient notice that the alert precondition is satisfied; it is unlikely that a person having ordinary skill in the art would choose a stock quote as the alert content, but there is nothing in the specification that requires an alert to always contain the specific information Defendant proposes.

This does not mean that alerts never contain additional information. For example, the alert described in Claim 1 of the '099 Patent comprises "information identifying the customer, the customer's contact information, the first vehicle, the second vehicle, and the adjusted second financial terms." ('099 Patent 25:41-45.) The specification provides additional examples of information that can be included in an alert, including the associated salesperson ('099 Patent 5:61-63) or deal sheet ('099 Patent 10:40-42). But these descriptions do not mean that alerts must always contain some additional information, nor that the alerts must always identify the customer and the favorable financial terms. To the contrary, that Claim 1 of the '099 Patent specifies that the alert identifies the customer and the "adjusted second financial terms" suggests

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that the term "alert" does not inherently include this information. *Phillips*, 415 F.3d at 1314 ("[T]he claim in this case refers to 'steel baffles,' which strongly implies that the term 'baffles' does not inherently mean objects made of steel."). For these reasons, the Court ruled at the *Markman* hearing that the term "alert" will have the plain and ordinary meaning of "a communication calling for attention."

**B. Message**

Plaintiff's Proposal	Defendant's Proposal
Plain and ordinary meaning, or  A communication.	A communication that identifies (1) a customer and (2) favorable financial terms on which the customer could exchange her current vehicle for a replacement vehicle.

As with the term "alert," the parties dispute whether a "message" must identify a customer and the favorable financial terms on which the customer could exchange her current vehicle for a replacement vehicle. The disputed phrase occurs in Claims 1, 4, 10, and 19 of the '529 Patent; Claims 1, 4, 7, and 15 of the '461 Patent; and Claims 1, 4, and 6 of the '791 Patent.

The term "message" is used similarly to the term "alert" in the claims of several of the Asserted Patents. For example, Claims 1 and 10 of the '529 Patent describe, respectively, a method and a computer system wherein a message is automatically generated "if it is determined that the changed information may affect whether it is favorable for the customer to replace a first vehicle and first financial terms with a second vehicle and second financial terms," but not generated "if it is determined that the changed information may not affect whether it is favorable for the customer to replace the first vehicle and first financial terms with the second vehicle and second financial terms." ('529 Patent 25:6-15, 26:22-30.) The inventions described in Claims 1 and 7 of the '461 Patent and 1 and 6 of the '791 Patent generate a message under similar circumstances. (See '461 Patent 25:6-15, 26:16-24; '791 Patent 25:7-11, 26:24-28.) In these claims, the term "message" takes on the plain and ordinary meaning of "a communication." There are no additional limitations suggesting that a message must identify a customer and the favorable financial terms.

Additionally, the term "alert" is contrasted with the term "message" in Claim 19 of the '529 Patent and Claim 15 of the '461 Patent. ('529 Patent 26:51-52; '461 Patent 26:45-46.) These claims are both dependent claims based on independent claims in which a message is generated. In the dependent Claim 19 of the '529 Patent and Claim 15 of the '461 Patent, the "message" is, or comprises, an "alert." To differentiate these claims, "message" and "alert" must take on different meanings, with the term "message" broader in scope than the term "alert." *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1242 (Fed. Cir. 2003) ("Under the doctrine of claim differentiation, dependent claims are presumed to be of narrower scope than the independent claims from which



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they depend."). This is consistent with the ordinary usage of the two terms, where an alert is a type of message.

The specification uses the term "message" only once, stating that "[a] status may indicate, for example, that the salesperson called the client and left a message, called the client and set an appointment, or the like." ('099 Patent 11:47-49.) Here, the term "message" again takes on its ordinary meaning.

Defendant makes largely the same arguments in support of its interpretation of the term "message" as it did for the term "alert." (Def.'s Br. 4-6.) The Court has already addressed and rejected these arguments with respect to the term "alert." These arguments are much weaker here, with nothing in the specification or the claims to suggest that the term "message" ever includes information identifying the customer or the favorable financial terms, let alone that this information is required. The only argument specific to the term "message" that Defendant makes is that the "amorphous breadth" of the term is underscored by the contrast between the telephone message described in the specification and the computer message described in the claims. (Def.'s Br. 4 n.3.) Given the plain and ordinary meaning of the term "message," which can apply to any type of communication, it is not surprising that it is used in multiple contexts in the claims and specifications. For these reasons, the Court ruled at the *Markman* hearing that the term "message" will have its plain and ordinary meaning.

**C. Batch Process and In Real-Time**

Plaintiff's Proposal	Defendant's Proposal
A process performed on accumulated data that executes without manual or other human intervention.	A process performed on accumulated data that executes without manual or other human intervention. A batch process is not performed in real-time.

Plaintiff's Proposal	Defendant's Proposal
Pertaining to a mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to respond in a timely manner to the external process.	Pertaining to a mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to respond in a timely manner to the external process. A batch process is not performed in real-time.

The disputed phrase "batch process" occurs in Claim 20 of the '099 Patent; Claims 8, 16, and 24 of the '752 Patent; Claim 13 of the '529 Patent; and Claim 10 of the '461 Patent. Both Plaintiff and

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Defendant agree that a batch process is "a process performed on accumulated data that executes without manual or other human intervention." The disputed phrase "in real-time" occurs in Claims 1, 4, 5, 8, 13, 19, and 20 of the '099 Patent; Claims 1 and 10 of the '529 Patent; and Claims 1 and 7 of the '461 Patent. The parties also agree that "in real-time" means "pertaining to a mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to respond in a timely manner to the external process." The parties dispute only whether a batch process can be performed in real-time.

The claim language itself teaches that a batch process can be performed in real-time. Claim 20 of the '099 Patent claims "[t]he method of claim 13, wherein the retrieving in real time of changed information is performed as a batch process." ('099 Patent 28:47-48.) Similarly, Claim 13 of the '529 Patent claims "[t]he computing system of claim 10, wherein the computer system is configured to access the changed information as a batch process." ('529 Patent 26:38-40.) Claim 10 of the '529 Patent specifies that the computing system "electronically access[es] in real-time information that has changed." ('529 Patent 25:54-55.) Thus, Claim 13 describes a computing system configured to access changed information in real-time as a batch process. Claim 10 of the '461 Patent similarly describes a computing system configured to retrieve changed information in real-time as a batch process. ('461 Patent 25:52-54, 26:32-34.) Plaintiff argues that these claims show that processing in real-time can be performed as a batch process. (Pl.'s Br. 10-11.) Defendant, however, argues that the ordinary meanings of these terms are mutually exclusive, and that if the patentee attempts to act as his own lexicographer, "he must clearly express this intent in the written description." (Def.'s Br. 9 (citing *Merck & Co. v. Teva Pharms. USA*, 395 F.3d 1364, 1370 (Fed. Cir. 2005)).) Because the patentee did not do that here, Defendant argues that these claims are impossibly inconsistent and therefore invalid. (Def.'s Br. 9.)

After further considering the arguments of defense counsel, the Court disagrees that a person of ordinary skill in the art would find these two terms necessarily mutually exclusive in the context of the Asserted Patents. It is true that generally, the terms "batch process" and processing in "real-time" are used in different situations: for example, to batch process a large amount of accumulated data at a set time versus processing that data piece by piece as it is gathered. This explains why technical dictionaries often contrast these terms against one another. (See Decl. of L. Rex Sears in Supp. of Def.'s Br. ("Sears Declaration"), ECF No. 134-1, Ex. B, at 7-8, ECF No. 134-2.) However, while batch processing is often not performed in real-time, that does not mean that it may **never** be performed in real-time. A automatic process can be performed on accumulated data during the actual time that an external process occurs, so that the computation results can be used to respond in a timely manner to the external process. If a system were to automatically process accumulated data at very short intervals—every minute, for example—and the external process occurred over a slower timeframe, then the results of the batch processing could be used to respond in a timely manner to the external process. This satisfies the parties'

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definitions of both "batch processing" and processing "in real-time."<sup>1</sup> Similarly, a system could automatically process accumulated data at even slower rates—every day or week—but so long as the external process was even slower (for example, if the system were measuring the movement of a glacier), the results of the batch processing could still occur in real-time. In situations like this, the typically clear-cut line between batch processing and processing in real-time blurs, and the batch process may be performed in real-time, at least insofar as Plaintiff and Defendant have defined the term "real-time."

The Asserted Patents support this interpretation. First, under this interpretation no claims are invalidated. "[C]laims can only be construed to preserve their validity where the proposed claim construction is 'practicable,' is based on sound claim construction principles, and does not revise or ignore the explicit language of the claims." *Generation II Orthotics Inc. v. Med. Tech. Inc.*, 263 F.3d 1356, 1365 (Fed. Cir. 2001) (citation omitted). Here, Plaintiff's proposed construction simply gives effect to the explicit language of the claims. Additionally, the terms are not used in a mutually exclusive manner in the specification. The specification teaches:

In one mode of operation, the financial terms comparison module **3935** performs batch comparisons periodically. In another mode of operation, the financial terms comparison module **3935** performs batch comparisons whenever new information is added to any one or more of the financing information **3910**, the customer information **3915**, or the product information **3920**. In another mode of operation, the financial terms comparison module **3935** performs a comparison for a particular identified customer and returns results of such a comparison in real time. When operating in this mode, the financial terms comparison module **3935** can advantageously lead to the generation of an alert in real time while, for example, a customer is in a dealership showroom. Advantageously, the financial terms comparison module **3935**, in one embodiment, is configured to be able to perform comparisons and calculations in any one or more of the above-described modes of operation, such that the most advantageous mode of operation under the circumstances can be chosen.

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<sup>1</sup> Defendant also cites to *Wiley Electrical and Electronics Engineering Dictionary* to contrast "batch processing" with "transaction processing" or "real-time transaction processing," which is processing done on a transaction-by-transaction basis, rather than processing done on accumulated data. (Def.'s Br. 8.) However, the term at dispute here is "in real-time," not "transaction processing."

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('099 Patent 22:59-23:10.) Here, three modes of operation are described, one performing "batch comparisons periodically," one performing "batch comparisons whenever new information is added," and one performing "a comparison for a particular identified customer . . . in real time." ('099 Patent 22:59-23:10.) It is true that the specification does not describe a mode of operation in which batch processing is done in real time; however, neither does the specification explicitly forbid it.

For these reasons, the Court is unwilling to explicitly define the two terms as mutually exclusive in all situations. Rather, it will be a question of fact as to whether a particular batch process is also performed in real-time.<sup>2</sup> Thus, the Court adopts the agreed portions of the parties' constructions and holds that the term "batch processing" means "a process performed on accumulated data that executes without manual or other human intervention," and the term "in real-time" means "pertaining to a mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to respond in a timely manner to the external process."

D. If within the phrase "if it is determined"

Plaintiff's Proposal	Defendant's Proposal
<p>Plain and ordinary meaning, or</p> <p>A condition that is necessary, but not necessarily sufficient, for the performance of a step.</p>	<p>A condition that is at least sufficient for the performance of a step.</p>

The disputed phrase occurs in the independent claims of the Asserted Patents, including in Claims 1 and 13 of the '099 Patent; Claims 1, 9, and 17 of the '752 Patent; Claims 1 and 10 of the '529 Patent; Claims 1 and 7 of the '461 Patent; and Claims 1 and 6 of the '791 Patent. The parties dispute whether the term "if" describes a condition that is necessary, but not necessarily

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<sup>2</sup> Plaintiff's expert suggests that because the use of the term "in real-time" in the claims corresponds to the retrieval of information that changes at a very slow rate, such as vehicle information and financial terms, batch processing on time scales of "a day, a week, or a month . . . are long enough to allow processing to be performed 'in real-time' as a 'batch process.'" (Decl. of Dr. Jaime G. Carbonell in Supp. of Pl.'s Br. ("Carbonell Declaration") ¶ 21, ECF No. 116.) The Court stresses that it has not held that vehicle information and financial terms change slowly enough that daily, weekly, or monthly retrieval would nonetheless allow for processing of this information "in real-time."

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sufficient, for the performance of a step or, instead, a condition that is at least sufficient for performance of that step.<sup>3</sup>

Claim 1 of the '791 Patent is illustrative for how the term is used in the Asserted Patents.

A method comprising:

by a computer system comprising computer hardware: . . .

determining, by the computer system, whether the current  
retrieved information may affect whether it is favorable  
for the customer to replace a first vehicle . . . .

generating a message **if it is determined** that the retrieved  
information may affect whether it is favorable for the  
customer to replace a first vehicle . . . .

('791 Patent 24:39-40, 56-59, 25:7-9.) In this claim, there are two separate steps: a "determining" step, in which the computer system determines whether the retrieved information may affect whether it is favorable for the customer to replace his vehicle, and a "message generation" step, in which the computer system generates a message "if it is determined" during the "determining" step that the retrieved information does affect the favorability of replacing the customer's vehicle.

While it seems as though the plain and ordinary meaning of the term "if" should be well-understood by all parties, Plaintiff and Defendant disagree on the meaning of the term in the context of the claims. Plaintiff argued at the *Markman* hearing and in its pleadings that while satisfaction of the "determining" step is a requirement for the generation of the message, the claim is silent on whether the determining step is the only condition precedent required to generate a

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<sup>3</sup> In the PI Order, the Court stated that:

[T]he claim does not require the message to be sent 'whenever' it is determined that a condition is satisfied, but rather 'if it is determined that the retrieved information may affect whether it is favorable for the customer to replace the first vehicle . . . .' ('791 Patent 25:7.) Thus, an infringing program need not **always** generate a message if the claimed limitation is satisfied; rather, the program may require other inputs before generating a message, such as, in this case, requiring the intervention of a user.

(PI Order 14 n.2), suggesting that it accepted Plaintiff's interpretation of the term "if." However, this analysis was without the benefit of the extensive briefing currently before the Court.



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message. (Pl.'s Br. 15.) Thus, Plaintiff argues that the method is still practiced "even if it includes additional, unrecited conditions precedent." (Pl.'s Br. 15.) Defendant disputes this interpretation, and instead argues that the phrase "if it is determined" means that the determining step, if satisfied, must always trigger the generation of a message. (Def.'s Br. 11.) Under this interpretation, the method would not be practiced if there were additional, unrecited conditions precedent required to generate a message.

Here, the language of the claims supports Plaintiff's definition. All of the claims at issue in this case use the word "comprising" as their transitional phrase, making them open-ended. *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim." (citation omitted)). This means that additional, unrecited elements are not excluded from the claim. See, e.g., *Crystal Semiconductor Corp. v. TriTech Microelects. Int'l, Inc.*, 246 F.3d 1336, 1347 (Fed. Cir. 2001) ("[The Federal Circuit] has consistently emphasized that the indefinite articles 'a' or 'an' when used in a patent claim, mean 'one or more' in claims containing open-ended transitional phrases such as 'comprising.'"); see also *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000). Similarly, this Court declines to construe the term "if" so that it limits the number of additional, unrecited conditions precedent to perform a step when the term is used in a claim containing an open-ended transitional phrase. Defendant's interpretation of the term "if" would restrict the claims to only the recited conditions precedent and preclude the use of additional conditions precedent. Thus, under Defendant's interpretation, a program that, after affirmatively determining that "the retrieved information may affect whether it is favorable for the customer to replace a first vehicle," waited for user input or checked whether the customer still lived within the vicinity of the car dealership before generating the message would not infringe the claim. This would negate the patentee's decision to construct open-ended claims.

The specification also supports Plaintiff's definition, as it teaches that deal sheets may be generated in response to conditions precedent beyond merely determining the favorability of replacing a customer's vehicle. For example, the specification states:

In one embodiment, the system generates a deal sheet and an associated contact management entry when the system receives an update of information used to calculate replacement agreements that are advantageously displayed in deal sheets. In one embodiment, deal sheets are generated periodically (e.g., weekly). In one embodiment, deal sheets are generated dynamically. In one embodiment, deal sheets are generated substantially continuously. . . . In one embodiment, **deal sheets are generated in response to a user request.**

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('099 Patent 10:4-15 (emphasis added).) Requiring a user to request a deal sheet places an additional condition precedent on the generation of that deal sheet. Not only must there be a determination as to the favorability of replacing the customer's vehicle, but there must also be some kind of user input. Defendant argues that this section of the specification merely teaches different processing modes, including periodic batch processing and processing in real time in response to a user request. (Def.'s Br. 15.) However, the specification explicitly refers to the generation of deal sheets in response to a user request, not the mode of executing processes. "[A] construction that would not read on the preferred embodiment would rarely if ever be correct and would require highly persuasive evidentiary support." *Chimie*, 402 F.3d at 1377 (alterations and internal quotation marks omitted); see also *Vitronics*, 90 F.3d at 1583. The specification, prosecution history, and extrinsic evidence lack the sort of "highly persuasive evidentiary support" that would lead the Court to limit the definition of the term "if" as Defendant proposes. See *Chimie*, 402 F.3d at 1377.

Defendant argued at the hearing that its definition of the word "if" matches the definitions of logicians and computer scientists. Defendant has also provided significant amounts of extrinsic evidence from publications by logicians and computer scientists supporting this definition. (Def.'s Br. 11-14.) However, Defendant's arguments ignore the fact that when used in logic or in computer science, it is possible to combine multiple "if" statements together (for example, by nesting these "if" statement) such that the performance of a step can require multiple conditions precedent. Defendant's definition precludes the consideration of these additional conditions. And "while extrinsic evidence 'can shed useful light on the relevant art,'" it is "less significant than the intrinsic record in determining 'the legally operative meaning of claim language.'" *Phillips*, 415 F.3d at 1317.

For the reasons discussed above, the Court held at the hearing that the term "if" in the context of "if it is determined" means "a condition that is necessary, but not necessarily sufficient, for the performance of a step."

**E. Configuration Request**

Plaintiff's Proposal	Defendant's Proposal
A request to the computer system that is configurable to define the scope of the request.	Indefinite, not construable.

The disputed phrase occurs in Claims 1 and 7 of the '461 Patent and Claims 1 and 6 of the '791 Patent. The parties dispute whether the phrase is indefinite, as Defendant argues it is.

The requirement of claim definiteness springs from 35 U.S.C. § 112(b), which states that claims must "particularly point[] out and distinctly claim[] the subject matter which the inventor or a joint

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inventor regards as the invention." 35 U.S.C. § 112(b). "[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014). "[D]efiniteness is to be evaluated from the perspective of someone skilled in the relevant art." *Id.* at 2128. Courts apply general principals of claim construction to determine if a claim is indefinite. *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1348 (Fed. Cir. 2005).

Here, Claims 1 and 7 of the '461 Patent and Claims 1 and 6 of the '791 Patent describe method and system claims in which computer systems "receiv[e] a configuration request for replacing the first vehicle of the customer with a different vehicle" and "in response to the configuration request," retrieve information associated with the customer, the two vehicles, and the financial terms available to the customer for the two vehicles. ('461 Patent 24:47-55, 25:49-57; '791 Patent 24:47-55, 25:42-26:5.) Plaintiff argues that the term "configuration request" takes on its plain and ordinary meaning to a person having skill in the art—a request to the computer system that is configurable to define the scope of the request. This interpretation is not inconsistent with the language of the claim, which describes requests sent to a computer system. However, because the claim language does not reveal how the request is configurable, Defendant argues the term is indefinite.

The specification, however, does provide some guidance for how requests to the computer system could be configured. For example, the specification explains that the criteria used to determine whether the replacement vehicle is favorable or not may vary. ('099 Patent 10:42-48, 19:39-48.) The specification also teaches that the rate at which the system generates alerts may vary. ('099 Patent 10:15-18.) Because the specification provides guidance for configuring a request, Defendant is incorrect that the Asserted Patents "call[] for 'configuring' without indicating what is to be configured, or how." (Def.'s Br. 16.)

Defendant also argues that the term "configuration request" is indefinite because all of the configuration examples supplied by the specification pertain to the configuration of a batch processed request, and not a request processed in real-time. (Def.'s Br. 19.) However, this argument fails for two reasons. First, this argument depends on Defendant's analysis of the term "request," which Defendant claims is limited to requests processed in real time. The Court disagrees that the Asserted Patents teach that requests may only be processed in real-time, and not by batch processing. While the term "request" is often used in the claims that are processed in real time (see, e.g., '529 Patent, Claims 1 & 10; '461 Patent, Claims 1 & 7), as has already been discussed, processing data in real-time and batch processing data are not necessarily mutually exclusive. Thus, even if the Asserted Patents did require all requests to be processed in real-time, that would not necessarily exclude requests that were batch processed quickly enough to satisfy real-time requirements as well. Second, the specification provides at least one example of a configuration request that could apply to requests processed in real time—a configuration

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request that modifies the threshold value for determining whether a replacement is favorable or not. (See '099 Patent 10:42-48, 19:39-48.)

For these reasons, the Court declines to find the term "configuration request" indefinite and adopts Plaintiff's proposed claim construction: "a request to the computer system that is configurable to define the scope of the request."

F. Current Information

Plaintiff's Proposal	Defendant's Proposal
Plain and ordinary meaning, or	Indefinite, not construable.
Information associated with the present time.	Alternative: Changed information retrieved in real time.

The disputed phrase occurs in Claims 1 and 6 of the '791 Patent. The parties dispute whether the phrase is indefinite, as Defendant argues it is.

Claims 1 and 6 of the '791 Patent describe method and system claims that "retriev[e] current information" associated with the customer, the two vehicles, and the financial terms available to the customer for the two vehicles and determine "whether the current retrieved information may affect whether it is favorable for the customer to replace a first vehicle and first financial terms with a second vehicle and second financial terms." ('791 Patent 24:49-60, 25:44-26:9.) In these claims, the term "current information" takes on its plain and ordinary meaning.

Defendant nonetheless argues that the term is indefinite because the specification expressly defines the term "current" in a manner that is inconsistent with its use in the claims. (Def.'s Br. 16-17.) The specification states that:

During the term of the financial agreement (the 'current agreement') covering the first product ('the current product'), a person may desire to use a second product (a 'replacement product') in lieu of the current product. In such an instance, to obtain the replacement product, a person may be willing to return the current product and enter a second financial agreement (a 'replacement agreement') that satisfies the first financial agreement.

('099 Patent 1:30-37.) Furthermore, the term "current" is frequently used throughout the specification, generally in reference to the vehicle and financial terms in the possession of the customer (in contrast to the replacement vehicle and replacement financial terms). (See, e.g., '099 Patent 2:9, 30, 46.) From this, Defendant argues that the patentee has thus expressly

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defined the term "current" as a synonym for "first," as in "first vehicle" and "first financial terms," and in contrast to "second," as in "second vehicle" and "second financial terms." (Def.'s Br. 17.) Thus, Defendant concludes that the '791 Patent's use of the term "current information" to refer to the first vehicle, the first financial terms, the second vehicle, and the second financial terms is inconsistent with its express definition.

However, to redefine a claim term in the specification, "the statement in the specification must have sufficient clarity to put one reasonably skilled in the art on notice that the inventor intended to redefine the claim term." *Merck*, 395 F.3d at 1370. Here, the patentee's use of the term "current" in the specification does not expressly demonstrate the patentee's intent to redefine this term. Rather, the patentee used the term "current" as a shorthand for the product or vehicle currently owned or leased by the customer. The patentee failed to redefine the term "current" to mean "first" in "clear enough terms to justify such a counterintuitive definition" of current. *Id.*

Alternatively, Defendant argues that the term "current information" should be construed to mean "changed information retrieved in real time." (Def.'s Br. 17-18.) Defendant bases this construction in part on Claim 7 of the '791 Patent. This claim, dependant on Claim 6 of the '791 Patent, describes "[t]he computing system of claim 6, wherein the computing system is configured to retrieve the changed information with respect to a plurality of customers." ('791 Patent 26:30-32.) Because this claim uses the phrase "changed information" while Claim 6 uses the phrase "current information," Defendant argues that the term "current information" must be synonymous with the term "changed information." (Def.'s Br. 17-18.) The Court disagrees. The plain meaning of the terms "changed" and "current" is very different, and the term "changed information" is used elsewhere in the Asserted Patents with no indication that it is related to the term "current information."<sup>4</sup> (See '099 Patent, Claims 13, 18, 19, & 20; '752 Patent, Claims 1, 6, 7, 8, 9, 14, 15, 16, 17, 22, 23 & 24; '529 Patent, Claims 1, 10, 11, 12 & 13; '461 Patent, Claims 1, 7, 8, 9 & 10.)

Defendant also asserts that because current information is associated with the present time, it must be retrieved in real-time. (Def.'s Br. 17-18.) However, information not retrieved in real-time can nonetheless be current. The requirement that information be "current" impacts only the status of the information when it is retrieved, not the time when the request is made. The information must be current, or associated with the present time, at the time of the retrieval—but there is no requirement that the retrieval occur at the same time as the original request. For example, a batch process that retrieves data every month nonetheless retrieves "current information" if that data is current and updated when it is retrieved. Thus, current information need not be retrieved in real time. For these reasons, the Court holds that the term "current information" takes the meaning "information associated with the present time."

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<sup>4</sup> Furthermore, the use of "changed information" rather than "current information" in Claim 7 of the '791 Patent may be a mistake.



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G. Different Respective Time Periods

Plaintiff's Proposal	Defendant's Proposal
<p>Plain and ordinary meaning.</p> <p>Alternative: Alternative time durations over which new payments could be made to finance a replacement vehicle, for example: 36, 48, or 60 months.</p>	<p>Indefinite, not construable.</p>

The disputed phrase occurs in Claim 5 of the '461 Patent and Claim 5 of the '791 Patent. Both of these claims are dependent claims, with the phrase used as follows:

1. A method comprising:  
by a computer system comprising computer hardware: . . .  
[automatically] calculating one or more new payments based  
on an estimated equity value of the first vehicle derived  
from the first financial terms, and, based on the second  
financial terms; . . . .
5. The method of claim 1, wherein the one or more new payments  
comprise payments for **different respective time periods**.

('461 Patent 25:31-33; '791 Patent 25:27-29.) Thus, the phrase "different respective time periods" references the "one or more new payments" that a customer would pay to replace his current vehicle with a replacement vehicle. Given the ordinary meaning of the term "different respective time periods," in this context one would expect new payments to take place over different time periods or durations. The specification supports this interpretation, as it teaches that "[t]he replacement agreements may be for any suitable term, including but not limited to 36 months, 48 months, 60 months, or any other period." ('099 Patent 5:34-36; see *also* '099 Patent 8:1-4, 16:7-11.)

Defendant nonetheless argues that the phrase "different respective time periods" is indefinite because "the specification describes two types of temporal variations, and nothing in the claim language tells which of those variations is intended." (Def.'s Br. 20.) As discussed, the specification teaches that the duration for the replacement agreement can vary, with examples ranging from 36 months to 60 months. The specification also teaches that payments can be made more or less often, so that they may occur "weekly, monthly, quarterly, yearly, or the like." ('099 Patent 1:25-26.) Thus, Defendant argues that the phrase "different respective time periods" could refer either to different payment durations or different payment rates, with no way to know which of these interpretations the patentee intended. (Def.'s Br. 20.)

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The Court disagrees with the argument that both of these options are equally likely in the context of the claim language. The claims describe the payments as "comprising payments for different respective time periods." This language, particularly the term "for," suggests payments made over different durations, not payments made at different rates. Because the context surrounding the term informs the reader that payment duration is more likely than payment rate, the patent does not "fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus*, 134 S. Ct. at 2124. For this reason, the Court holds that the phrase "different respective time periods" will have the meaning "alternative time durations over which new payments could be made to finance a replacement vehicle, for example: 36, 48, or 60 months."

III. RULING

For the foregoing reasons, the Court **CONSTRUES** the disputed Claim terms as follows:

1. "Alert": **A communication calling for attention.**
2. "Message": **A communication.**
3. "Batch process": **A process performed on accumulated data that executes without manual or other human intervention.**
4. "In real time": **Pertaining to a mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to respond in a timely manner to the external process.**
5. "If" within the phrase "if it is determined": **A condition that is necessary, but not necessarily sufficient, for the performance of a step**
6. "Configuration request": **A request to the computer system that is configurable to define the scope of the request.**
7. "Current information": **Information associated with the present time.**
8. "Different respective time periods": **Alternative time durations over which new payments could be made to finance a replacement vehicle, for example: 36, 48, or 60 months.**

IT IS SO ORDERED.