

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ContentGuard Holdings, Inc.,	§	
	§	
Plaintiff,	§	
	§	
-against-	§	
	§	Civil Action No. 2:13-cv-01112-JRG
Amazon.com, Inc.; Apple Inc.; BlackBerry	§	
Limited (fka Research In Motion Limited) and	§	
BlackBerry Corporation (fka Research In	§	JURY TRIAL DEMANDED
Motion Corporation); DirecTV, LLC; HTC	§	
Corporation and HTC America, Inc.; Huawei	§	
Technologies Co., Ltd. and Huawei Device	§	
USA, Inc.; Motorola Mobility LLC; Samsung	§	
Electronics Co., Ltd., Samsung Electronics	§	
America, Inc., and Samsung	§	
Telecommunications America, LLC.	§	
	§	
Defendants.	§	
ContentGuard Holdings, Inc.,	§	
	§	
Plaintiff,	§	
	§	
-against-	§	Civil Action No. 2:14-cv-00061-JRG
	§	
Google, Inc.	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED
	§	
	§	

CONTENTGUARD'S OPENING CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
I. INTRODUCTION	1
II. PROPOSED CONSTRUCTIONS FOR THE '859, '072, '160, '576, '956, AND '007 PATENTS ("Trusted Repository Patents")	1
A. Repository / Trusted.....	1
1. Physical Integrity	3
2. Behavioral Integrity	3
B. "Content" and "Rights" Terms	4
1. "Digital work" should not be read into claims not positively reciting the term.	4
2. A "permanent attachment" between content and its associated rights should not be read into the claims.	6
3. "Usage rights" should not be construed to be a "language."	8
4. "Digital Work" and "Usage Rights" in the '160 Patent.....	9
5. Digital document.....	10
6. Requester mode of operation / Server mode of operation	11
C. Manner of Use.....	12
D. Render / Rendering	12
E. Authorization Object.....	13
F. Identification Certificate	14
G. Random Registration Identifier / Nonce	15
H. Distributed Repository	16
I. Document Platform.....	17

J. Claims Where ContentGuard is Seeking Judicial Correction.....17

1. The method of claim 1, wherein the validating ('007 Claim 5).....17

2. Determining, by the document platform.....18

K. Grammar19

L. Description Structure20

III. PROPOSED CONSTRUCTIONS FOR THE '280 AND '053 PATENTS
("Meta-Rights Patents").....21

A. License21

B. Meta-Right22

C. Usage Rights and Manner of Use23

D. State Variable.....25

E. "Specifying in a first license . . . at least one usage right and at
least one meta-right . . . includ[ing] at least one right that is
shared"27

IV. PROPOSED CONSTRUCTIONS FOR THE '556 PATENT.....28

A. "detect(ing a transfer)"28

B. "instance"28

C. "other portion"29

D. "over said network between user devices"29

V. MEANS PLUS FUNCTION CLAIM TERMS30

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Abbott Labs. v. Syntron Bioresearch, Inc.</i> , 334 F.3d 1343 (Fed. Cir. 2003).....	14
<i>Accent Packaging, Inc. v. Leggett & Platt</i> , 707 F.3d 1318 (Fed. Cir. 2013).....	26
<i>Adams Respiratory Therapeutics, Inc. v. Perrigo Co.</i> , 616 F.3d 1283 (Fed. Cir. 2010).....	6
<i>Agere Sys. v. Sony Corp.</i> , 2008 U.S. Dist. LEXIS 39605 (E.D. Tex. May 15, 2008).....	30
<i>Am. Patent Dev. Corp. v. Movielink</i> , LLC, 604 F. Supp. 2d 704 (D. Del. 2009)	28
<i>C.R. Bard, Inc. v. U.S. Surgical Corp.</i> , 388 F.3d 858 (Fed. Cir. 2004).....	2
<i>CBT Flint Partners v. Return Path, Inc.</i> , 654 F.3d 1353 (Fed. Cir. 2011).....	17
<i>Cephalon Inc. v. Mylan Pharms. Inc.</i> , 962 F. Supp. 2d 688 (D. Del. 2013).....	28
<i>Droplets, Inc. v. eBay, Inc.</i> , 2014 U.S. Dist. LEXIS 117699 (E.D. Tex. Aug. 22, 2014)	29
<i>Elan Corp., PLC v. Andrx Pharms., Inc.</i> , 2008 U.S. Dist. LEXIS 94525 (S.D. Fla. Aug. 13, 2008).....	29
<i>Encap LLC v. Oldcastle Retail, Inc.</i> , 2012 U.S. Dist. LEXIS 84472 (E.D. Wis. June 19, 2012).....	28
<i>MasterObjects, Inc. v. Yahoo!, Inc.</i> , No. C 11-02539-JSW, 2013 U.S. Dist. LEXIS 168296 (N.D. Cal. Nov. 26, 2013).....	15
<i>Moneysuite Co. v. Ins. Answer Ctr.</i> , 2013 U.S. Dist. LEXIS 183408 (C.D. Cal. Mar. 25, 2013)	26
<i>Novo Industries L.P. v. Micro Molds Corp.</i> , 350 F.3d 1348 (Fed. Cir. 2003).....	17, 29
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (<i>en banc</i>)	14

Thorner v. Sony Computer Entm’t.,
669 F.3d 1362 (Fed. Cir. 2012).....5

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 (Fed. Cir. 1996).....28

INDEX OF EXHIBITS

EX. A	United States Patent No. 6,963,859
EX. B	United States Patent No. 7,523,072
EX. C	United States Patent No. 7,225,160
EX. D	United States Patent No. 7,269,576
EX. E	United States Patent No. 8,370,956
EX. F	United States Patent No. 8,393,007
EX. G	United States Patent No. 7,774,280
EX. H	United States Patent No. 8,001,053
EX. I	United States Patent No. 8,583,556
EX. J	<i>ZTE Corporation and ZTE (USA) Inc. v. ContentGuard Holdings, Inc.</i> , IPR2013-00139, Patent 7,269,576, Paper 57, June 26, 2014
EX. K	Declaration of Dr. Michael Goodrich in Support of ContentGuard's Opening Claim Construction Brief
EX. L	Amendment, Patent Application No. 08/967,084, Docket No. D/94789C, December 15, 1999
EX. M	Amendment After Final, Patent Application No. 11/304,794, Docket No. 111325-028700, May 23, 2008
EX. N	Response to Office Action, Patent Application No. 11/304,794, Docket No. 111325-028700, October 15, 2008
EX. O	Excerpts from Mark J. Stefik deposition dated November 3, 2014
EX. P	Excerpts from Peter L. T. Pirolli deposition dated November 6, 2014
EX. Q	<i>ZTE Corporation and ZTE (USA) Inc. v. ContentGuard Holdings, Inc.</i> , IPR2013-00137, Patent 6,963,859, Paper 58, July 1, 2014
EX. R	<i>ZTE Corporation and ZTE (USA) Inc. v. ContentGuard Holdings, Inc.</i> , IPR2013-00133, Patent 7,523,072, Paper 15, July 1, 2014
EX. S	Excerpts from Google Dictionary at www.google.com

- EX. T Excerpts from *The American Heritage College Dictionary*, Fourth Edition
- EX. U Excerpts from *The American Heritage Dictionary of English* at www.thefreedictionary.com
- EX. V *Ex parte* Xin Wang and Bijan Tadayon Decision on Appeal, Appeal 2009-008480, Application 10/162,212, Decided December 16, 2009
- EX. W Excerpts from Patent Application No. 10/956,070, Docket No. 111325-235000, Response to Office Action, February 28, 2007
- EX. X Excerpts from Patent Application No. 13/210,153, Detailed Action
- EX. Y Amendment and Response, Patent Application No. 13/210,153, Docket No. 12-113-US-D4, October 9, 2012
- Ex. Z Amendment and Response, Patent Application No. 13/210,153, Docket No. 12-113-US-D4, August 14, 2013

I. INTRODUCTION

Pursuant to P.R. 4-5(a), ContentGuard Holdings, Inc. (“ContentGuard”) respectfully submits this Opening Brief on the proper construction of the disputed claim terms of the patents-in-suit.¹ The nine patents-in-suit relate to technologies involving the field of digital rights management. ContentGuard refers the Court to its technology tutorial for an overview of the patents-in-suit and inventions disclosed in the patents. ContentGuard proposes constructions for the disputed terms in accordance with long-established principles of claim construction—giving a claim term the full breadth of its ordinary meaning that one of ordinary skill in the art, at the time of the invention and in light of the patent’s specification and prosecution history, would have given it. Because the Court is familiar with the law of claim construction, ContentGuard will discuss specific claim construction principles only where applicable to the facts.

II. PROPOSED CONSTRUCTIONS FOR THE ’859, ’072, ’160, ’576, ’956, AND ’007 PATENTS (“Trusted Repository Patents”)

A. Repository / Trusted

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“repository”	“a trusted system in that it maintains physical, communications, and behavioral integrity in the support of usage rights”	“A trusted system, which maintains physical, communications and behavioral integrity, and supports usage rights.” Alternatively, indefinite
“trusted”	“maintains physical, communications, and behavioral integrity in the support of usage rights”	“Maintains physical, communications and behavioral integrity.” Alternatively, indefinite
Physical integrity	prevents access to content by a non-trusted system	“preventing access to information by a non-trusted system.”
Communications integrity	only communicates with other devices that are able to present proof that they are trusted systems, for example, by using security measures such as encryption, exchange of digital certificates, and nonces	“only communicates with other devices that are able to present proof that they are trusted systems, e.g., by using security measures such as encryption, exchange of digital certificates, and nonces.”
Behavioral integrity	requires software that is to be installed in the repository to include a digital certificate, in other words, an assurance that the software comes from a source known to the repository	“requiring software to include a digital certificate in order to be installed in the repository.”

¹ U.S. Patent Nos. 6,963,859 (“’859”), 7,523,072 (“’072”), 7,225,160 (“’160”), 7,269,576 (“’576”), 8,370,956 (“’956”), 8,393,007 (“’007”) (collectively, the “Trusted Repository Patents” or “Stefik Patents,”); U.S. Patent Nos. 7,774,280 (“’280”) and 8,001,053 (“’053”) (collectively, the “Meta Rights Patents” or “Nguyen/Chen Patents,”); and U.S. Patent No. 8,583,556 (the “Transaction Tracking Patent” or “Dunkeld Patent”) attached as Exs. A-I. The Stefik patents are continuations of the same original application. The Nguyen/Chen patents claim priority to a common set of provisional applications.

ContentGuard proposes nearly identical constructions for the terms “repository” and “trusted” based on the glossary definition from the end of the specification for “repository:”

Conceptually a set of functional specifications defining core functionality **in the support of usage rights. A repository is a trusted system in that it maintains physical, communications and behavioral integrity.**

[’859: 50:48-51]. The glossary defines a “repository” as “a trusted system in that it maintains physical, communications and behavioral integrity.” ContentGuard’s proposed construction for “repository” adopts this language from the glossary verbatim while Defendants’ proposed construction introduces ambiguities by replacing “in that it” with “which.”

ContentGuard’s proposed construction for “repository” further adopts the language from the glossary with respect to the functionality of the repository: “in the support of usage rights.” Defendants’ proposed construction further deviates from the glossary by replacing “in the support of usage rights” with “and supports usage rights.” Defendants’ proposal modifies the glossary language that explains the purpose of the “repository” is to provide a repository that can be “trusted” in support of usage rights, i.e., trusted to provide and enforce rights to digital content in accordance with such rights.

Defendants argue in support of their construction because it was adopted by the Patent Trial and Appeal Board (“PTAB”) as part of an Inter Partes Review (“IPR”). The PTAB based its construction on the same glossary definition ContentGuard relies on, but provided no reason to depart from the language from the glossary. Ex. J at 10-11. ContentGuard’s construction more closely follows the language used by the patentee in the specification.²

For the term “trusted,” ContentGuard’s proposed construction is nearly identical to its construction for “repository,” and is also directly supported by the specification which defines the term “trusted” to include physical, communications, and behavioral integrity:

² *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004) (“[T]he inventor’s written description of the invention, for example, is relevant and controlling insofar as it provides clear lexicography . . .”).

The systems are trusted because they are able to take responsibility for fairly and reliably carrying out the commercial transactions. That the systems can be responsible (“able to respond”) is fundamentally an issue of integrity. The integrity of repositories has three parts: physical integrity, communications integrity, and behavioral integrity.

[’859: 11:55-61; *see also* 6:29-31 (“the digital work genie only moves from one trusted bottle (repository) to another”)].

1. Physical Integrity

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“repository”	“physical integrity” — prevents access to content by a non-trusted system	“Physical integrity” means “preventing access to information by a non-trusted system.”

ContentGuards’ proposal is directly supported by the description of “physical integrity” in the specification: “repositories never allow non-trusted systems to access the works directly.” [’859: 12:4-5]. Defendants’ proposed construction does not identify what “information” the physical integrity applies to. ContentGuard’s proposal clarifies for the jury that the relevant “information” is the “content,” as described by the specification: “Physical integrity applies both to the repositories and to the protected digital works.” [’859: 11:63-64].

2. Behavioral Integrity

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“repository”	“behavioral integrity”— requires software that is to be installed in the repository to include a digital certificate, in other words, an assurance that the software comes from a source known to the repository	“Behavioral integrity” means “requiring software to include a digital certificate in order to be installed in the repository.”

ContentGuard’s construction is directly supported by the description of “behavioral integrity” in the specification: “The integrity of the software is generally assured only by knowledge of its source.” [’859: 12:36-37]. ContentGuard’s construction is further supported by the PTAB’s construction and its understanding of the term “digital certificate.” As part of its decision finding claims of the Stefik patents patentable, the PTAB “[credited] the testimony of the expert witness of ContentGuard, Dr. Goodrich that ‘a person of ordinary skill in the art [in 1994] would [have understood] a digital certificate to be an assurance that downloaded software comes from a reputable source, including a measure of tamper resistance.’” Ex. J at 28.

B. “Content” and “Rights” Terms

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“content” “digital content”	Any work that has been reduced to a digital representation	<p>“The digital information (i.e. raw bits) representing a digital work.”</p> <p>Where, for the ’859, ’072, ’576, ’956, and ’007 patents “digital work” should be construed to mean:</p> <p>“Any encapsulated digital information. Such digital information may represent music, a magazine or book, or a multimedia composition. Usage rights and fees are attached to the digital work.”</p>
“rights” “usage rights” “usage rights information”	An indication of the manner in which a [digital work / digital content / content / a digital document] may be used or distributed as well as any conditions on which use or distribution is premised	[Usage Right(s) ’859; ’072 / rights / usage rights information] = “A language for defining the manner in which a digital work may be used or distributed, as well as any conditions on which use or distribution is premised. Usage rights must be permanently attached to the digital work.”

The parties’ constructions for the “content” and “rights” terms include significant agreement. Both sides agree that content is a digital representation of a work without limitation as to the nature of the work represented (e.g., book or movie). Both sides agree that rights indicate the manner in which content may be used or distributed as well as any conditions on which use or distribution is premised. Defendants, however, seek to import additional limitations to the claims through the “content” and “rights” terms that are inconsistent with both the claims and the specification. The parties’ disputes over these terms center on a few issues. First, Defendants attempt to bootstrap “digital work” and their corresponding interpretation into claims that do not contain the term. In other words, Defendants first propose a construction that introduces a term *not* found in the claims and then propose a construction for a term (“digital work”) found in the proposed construction. Second, Defendants attempt to insert an additional requirement that rights must be “permanently attached” to content or digital works into the claims. Third, the parties also dispute whether an erroneous glossary entry that a usage right be a “language” should be read into the claims.

1. “Digital work” should not be read into claims not positively reciting the term.

Defendants seek to import their construction for “digital work” into the asserted claims

through the “content” and “rights” terms and almost every other disputed term for which they offer a construction. This is not because the term “digital work” is a necessary part of the claims, but because the glossary definition for “digital work” contains the sentence “Usage rights and fees are attached to a digital work.” This is a serpentine attempt to insert an optional feature from the specification into claims directed to other aspects of the disclosed inventions. The Court should reject this attempt because the intrinsic record fails to establish by clear lexicography or disavowal that the patentee intended to deviate from the plain and ordinary meaning of “content” and redefine it to be the representation of a digital work attached to usage rights and fees. *Thorner v. Sony Computer Entm’t.*, 669 F.3d 1362, 1367 (Fed. Cir. 2012).³

The Stefik patents do not “clearly set forth a definition of [content] other than its plain and ordinary meaning” as required by *Thorner*. “Digital work” and “content” are defined twice:

Term	First Definition	Second Definition
Content	any work that has been reduced to a digital representation [’859: 5:64-66]	The digital information (i.e., raw bits) representing a digital work [’859: 49:52-54]
Digital work	any work that has been reduced to a digital representation [’859: 5:64-66]	Any encapsulated digital information. Such digital information may represent music, a magazine or book, or a multimedia composition. Usage rights and fees are attached to the digital work. [’859: 50:8-12]

Of these definitions, the specification definition of both terms, the glossary definition of content, and the first two sentences of the glossary definition of the term “digital work” are consistent, both with each other and with the plain and ordinary meaning of these terms in the art. The final sentence of the “digital work” glossary definition injects an optional feature of the preferred embodiment, and represents a departure from the plain and ordinary meaning of “content.” Further, Defendants would have the Court read the glossary definition of “digital work” into the glossary definition of “content.” Integrated, this results in circular nonsense: “the digital information (i.e., raw bits) representing any encapsulated digital information.”

³ “The patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope.”

Further, to the extent Defendants contend that the glossary manifests a clear intent to define the terms contained therein, the glossary addresses “content” and “digital work” separately. Defendants’ attempt to read these terms together frustrates their ability to argue that these terms should be defined by the glossary. To the extent “digital work” means anything more than “any digital representation of a work,” the patentee chose to use “content” rather than “digital work” in the claims. The Court should honor that choice.

If the Court does decide to import the term “digital work” into claims not already reciting it, the Court should remove the sentence stating that usage rights and fees are attached to the digital work from the construction. Defendants will claim that the last sentence found in the glossary term digital work is part of the patentee’s definition, but the intrinsic evidence indicates that the patentee intended only the first two sentences to apply. For example, in distinguishing over prior art in a related application, the patentee cited only the first two sentences from the glossary entry as the definition for “digital work.” Ex. L at 9.

Additionally, the specification teaches that fees are optional, and that they are not required in the preferred embodiment. Ex. K (“Goodrich Decl.”) at ¶ 52. In the grammar notation disclosed in the patent, the braces { } denote optional items. [’859: 17:47-48]. In the grammar element for the right, conditions and fees are listed in braces, and the accompanying text explains that, by default, no fees are attached. [’859: 18:19-29 (“In the currently preferred embodiment...no fee is required.”)]. A construction that excludes the preferred embodiment is rarely, if ever, correct. *Adams Respiratory Therapeutics, Inc. v. Perrigo Co.*, 616 F.3d 1283, 1290 (Fed. Cir. 2010).

2. A “permanent attachment” between content and its associated rights should not be read into the claims.

Defendants attempt to insert the requirement of a “permanent attachment” between content and its associated usage rights through their constructions of both the content and rights

terms. The Court should deny Defendants' request because the patents do not use "attach" in a way that would be understood by the jury, and the agreed portion of the parties' constructions for the rights terms already encompasses the "attachment" contemplated by the patent.

Defendants will likely direct the Court to language in the Stefik specification that a "key feature of the present invention is that usage rights are permanently 'attached' to the digital work." ['859: 6:11-12]. The patentee put quotes around the term "attached" for good reason – the relationship described by the specification, and laid out in detail in the preferred embodiment, is not a permanent attachment in the typical meaning of those terms. The Stefik patents teach that "usage rights" and their associated "digital works" exist independently. Goodrich Decl. at ¶46-51. In the preferred embodiment, usage rights and their associated content are stored in separate files: the rights in a "descriptor" file and the content in a "contents" file. ['859: Fig. 12, 8:46-48]. Figures 5 and 6 illustrate the digital work of the preferred embodiment separate and distinct from any fees or usage rights. ['859: 8:58-9:6]. Figure 7 illustrates the "attachment" between the usage rights file and the contents file of the preferred embodiment consisting of an address or pointer that associates the usage rights file with the work. ['859: 9:11-17]. The patent teaches not only that usage rights and content are stored in separate files, but that they may be stored on different devices. ['859: 13:37-44]. The patent contemplates using high capacity removable storage for the contents file (e.g., an optical disk) such that content may be removed or transferred independently of the usage rights file. ['859: 13:44-47]. During prosecution of the '072 patent, the patentee repeatedly distinguished over prior art in part on the basis that the asserted reference required the alleged usage rights to be stored in the same file, and necessarily the same device, as the alleged content. Exs. M at 8; N at 11-12. Further details regarding the relationship between rights and content are positively recited by the asserted claims. Defendants' proposal to add the requirement of an "attachment" would mislead the jury as to the nature of the relationship between rights and content described in the specification and import a limitation into the claims

that is not consistent with the patents.

Defendants' requirement that the "attachment" be permanent is also misleading. The "attachment" contemplated by the Stefik disclosure is a relationship between the rights and its associated content that persists for the term or life of the right, but the content associated with the right may exist both before and after the term or life of the right. The disclosure teaches that digital works can be created without usage rights and usage rights can be created and applied to such digital works in repositories. [’859: Fig. 1; 6:33-38]. The specification also contemplates using a usage right to produce a digital copy of a digital work without usage rights. [’859: 36:1-3, 12-14]. The relationship between a usage right, as contemplated by the specification, and its associated content necessarily persists for the term of the right because the right, by its nature, refers to a specific piece of content. Requiring the attachment be "permanent" would compound the error, as the Stefik patents teach that the associations between usage rights and content may be created and removed by repositories. [’859: Fig. 1; 6:33-38; 36:1-3, 12-14]. Therefore, Defendant's construction is improper.

3. "Usage rights" should not be construed to be a "language."

Defendants ask the Court to ignore the first definition and the teaching of the preferred embodiment and hold that "usage rights" are a "language." The Stefik patents separately introduce the concept of usage rights and the concept of a *usage rights language*. At the outset, the specification defines "usage rights" and "rights" as "a term which refers to rights granted to a recipient of a digital work [that] define how a digital work may be used and if it can be further distributed." [’859: 6:3-7]. In the preferred embodiment, the usage rights are *expressed* in a usage rights language, but are not themselves a language. [’859: 16:63-66]. Incongruously, the glossary entry for "usage rights" recites "a language for defining the manner in which a digital work may be used or distributed, as well as any conditions on which use or distribution is premised." [’859: 51:7-10]. The glossary incorrectly purports to define "usage rights" while

actually defining “usage rights language.” Ex. O at 155:2-158:20; Ex. P. at 172:7-23. Generally, while rights may be expressed using a language, they are not themselves a language. Goodrich Decl. ¶53. This error in the glossary definition was corrected in the ’160 patent. [’160: 48:24-26].

4. “Digital Work” and “Usage Rights” in the ’160 Patent

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“Digital Work” (’160 Patent)	Any work that has been reduced to a digital representation	“Digital content with any associated usage rights. Such digital content may represent music, a magazine or book, or a multimedia composition.” Where “digital content” is defined as: “The digital information (i.e. raw bits) representing a digital work”
“usage rights” (’160 Patent)	An indication of the manner in which a digital work may be used or distributed as well as any conditions on which use or distribution is premised	“An indication of the manner of use by which a digital work may be used or distributed, as well as any conditions on which manner of use is premised.”

For the ’160 patent, ContentGuard does not believe “digital work” needs to be construed, or that “usage rights” should be construed inconsistently from the Court’s construction of the term for other patents as Defendants urge. The asserted claims of the ’160 patent are directed to a specific structure for a digital work, namely one having a “digital content portion,” a “usage rights portion,” and a “description structure” relating the digital content portion and the usage rights portion. [’160 claim 1]. The claims already recite the contents and structure of the claimed digital work, so no separate construction of that term is necessary. Similarly, the asserted claims of the ’160 patent already recite that the “usage rights portion” of the claimed digital work “[specify] a manner of use relating to one or more purposes for which the digital work can be used.” [’160: 48:44-46].

For “digital work,” Defendants ask the Court to apply a circular two-stage construction where a digital work consists of digital content and digital content is digital information representing a digital work. This would only confuse the jury. As an alternative, ContentGuard proposes its construction for “digital content,” discussed above. Further, because Defendants’ construction reads “associated usage rights” into “digital work,” Defendants’ constructions

would require the “digital content” to represent both the digital work and the usage rights. This is contradicted by Defendants’ construction for “digital work” which recognizes that “usage rights” and “digital content” are distinct.

For “usage rights,” defendants propose a different construction for the ’160 patent than for any of the other patents. In their proposal, Defendants repeat features already in the claims as well as optional features (e.g., conditions) in a way that differs in form but not in substance from their proposal for the other patents. Defendants’ form over substance approach would only confuse the jury.

5. Digital document

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“digital document” “document”	Any work that has been reduced to a digital representation	“A type of digital work that is written in or viewable as text, for example a book, magazine article, or a message.” Where “digital work” is construed to mean: “Any encapsulated digital information. Such digital information may represent music, a magazine or book, or a multimedia composition. Usage rights and fees are attached to the digital work.”

Defendants attempt to narrow “document” and “digital document” to require each to be viewable only as text. Defendants’ construction directly contradicts the dependent claims of the ’072 patent which recite that in one embodiment the “digital document” is a software program. [’072 claims 3, 11, 19 (“at least a portion of the digital document is a software program”)]. Defendants’ construction further contradicts the description of “document” in the specification which encompasses other content such as movies. For example, the Stefik specification’s discussion of repository security levels differentiates between repositories suitable for distribution of low value digital works from those suitable for distribution of first run movies, and classifies repositories for all such content as “document repositories.” [’072: 14:43, 54]. The Stefik specification also contemplates a “document playback platform (e.g., for executing or viewing)” documents. [’072: 26:25-27]. In aggregate, the intrinsic evidence confirms that the term “digital document” is inclusive of content that can be viewed, executed, or played back and

not restricted to content viewable only as text. Goodrich Decl. at ¶54.

6. Requester mode of operation / Server mode of operation

Claim Term	ContentGuard's Construction	Defendants' Construction
“requester mode of operation” “server mode of operation”	No construction necessary in view of language already in the claims	<u>Requester mode of operation</u> : “A mode of a repository where it is requesting access to a digital work.” <u>Server mode of operation</u> : “A mode of a repository where it is processing an incoming request to access the digital work.” Where “digital work” is construed to mean: “Any encapsulated digital information. Such digital information may represent music, a magazine or book, or a multimedia composition. Usage rights and fees are attached to the digital work.”

Defendants seek to construe the “mode of operation” terms, not because doing so will add any clarity to the claims, but because they wish to insert their construction for “digital work” into claims not already reciting that term. Defendants push this construction in order to import the sentence “usage rights and fees are attached to the digital work” into claims not reciting those limitations. For the reasons given in Section II.B.1 above, this machination should be rejected. The patentee chose to use the term “content” rather than “digital work” in the asserted claims, and the Court should respect the patentee’s choice of language.

The asserted claims of the ’859 patent already recite the features of both the “server mode of operation” and the “requester mode of operation” with greater detail than is supplied by Defendants’ proposed constructions. Claims 1 and 58 of the ’859 patent, where the “server mode of operation” term appears, already require the server mode of operation be operative to receive and process a request to access digital content (specifically a request to render the content). [’859: 51:26-30, 34-38; 54:17-21, 25-28]. Likewise, both claims reciting a “requester mode of operation” already require the requester mode of operation to request access to content. [’859: 51:31-33; 54:22-24]. The parties agree that content is a digital representation of a work without restriction as to the nature of the work represented. Accordingly, the only genuine dispute regarding these terms is whether the court should import the term “digital work” into the claim and also impose a requirement for an “attachment” of usage rights and fees where neither

“digital works” nor “fees” are addressed by the claim.

C. Manner of Use

Claim Term	ContentGuard's Construction	Defendants' Construction
“manner of use”	A way in which [a digital work / digital content / content / a digital document] may be used	“A defined way of using or distributing a digital work (for example, PLAY, COPY, or PRINT), as distinct from conditions which must be satisfied before that way of using or distributing the digital work is allowed.”

ContentGuard's construction is consistent with the ordinary meaning of the term “manner of use” and its use in the Stefik patents. In contrast, Defendants' construction improperly imports a limitation into the term that is inconsistent with the specification: that the “manner of use” is “distinct from conditions.”

The specification teaches that conditions can be included in a “manner of use”—not that they are distinct. In the context of a preferred embodiment of the usage rights grammar items depicted in Figure 15, item 1504 states that the “Play” and “Print” manners of use include “Player-ID” and “Printer-ID.” The “Player-ID” and “Printer-ID” specify conditions as to the player or printer required to exercise that manner of use. [’859: 18:19-24 and 44-55]. Thus, the specification teaches that conditions may be part of the “manner of use.” Goodrich Decl. ¶¶36-39.

Further, Defendants' construction is improper because it seeks to import Defendants' construction of the term “digital work” into claims that do not include this term. For example, none of the claims of the ’859 patent include the term “digital work”—they use the term “content.” ContentGuard's construction properly accounts for the terms used by the Stefik patents by including the phrase: “[a digital work / digital content / content / a digital document].”

D. Render / Rendering

Claim Term	ContentGuard's Construction	Defendants' Construction
“render” “rendering”	Converting into an ephemeral, transitory, or nondigital form, such as for playing digital movies, playing digital music, playing a video game, running a computer program, or displaying a document on a display	“Play, print, display, or execute a digital work/digital content.”

ContentGuard's construction is taken from the description of rendering in the patents:

Grammar element 1504 “Render-Code=[Play: {Player: Player-ID}|Print: {Printer: Printer-ID}]” lists a category of rights all involving the making of

ephemeral, transitory, or non-digital copies of the digital work. After use the copies are erased.

Play A process of rendering or performing a digital work on some processor. This includes such things as playing digital movies, playing digital music, playing a video game, running a computer program, or displaying a document on a display.

[’859: 18:44-53]. ContentGuard’s construction further provides examples to guide the jury in understanding that rendering includes, for example, conversion for playing digital movies and displaying a document on a display. In contrast, Defendants’ construction is unduly narrow because it only accounts for specific forms of conversion (i.e. “play, print, display, or execute”), while the specification allows for conversion into any ephemeral, transitory, or non-digital form.

E. Authorization Object

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“authorization object”	digital information that must be possessed to gain access to digital content	A digital work that can be moved between repositories and, when specified by a usage right attached to another digital work, must be obtained to exercise the usage right.

The claims of the Stefik patents make clear that an “authorization object” is “digital information that must be possessed to gain access to digital content:”

means for making a request for an authorization object required to be included within the repository for the apparatus to render the digital content; and means for receiving the authorization object when it is determined that the request should be granted.

[’576 Claim 1].

requesting an authorization object for the at least one recipient computing device to make the digital content available for use, the authorization object being required to receive the digital content and to use the digital content; and receiving the authorization object if it is determined that the request for the authorization object should be granted.

[’956 Claim 4]. *See also* ’007 Claim 3. Thus, ContentGuard’s construction clarifies the role of the “authorization object” set forth in the claims in that it must be possessed to gain access to digital content.⁴

In contrast, Defendants’ construction fails to provide any context or meaning for the term

⁴ *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*) (“[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms.”).

“authorization object.” Defendants’ construction could apply to any “digital work” that can be moved between repositories. For example, a movie that is moved between repositories would qualify as an “authorization objection” under Defendants’ construction. However, the claims of the Stefik patents make clear that the “digital content” is separate and distinct from the “authorization object,” and that the “authorization object” is used in authorizing the repository to gain access to the digital content. [’576 Claim 1; ’956 Claim 4; ’007 Claim 3]. Defendants’ construction is also improper because it imports the term “digital work” into claims that do not use this term. None of the claims using the term “authorization object” include the term “digital work”—they use the term “digital content” instead.

F. Identification Certificate

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“identification certificate”	A signed digital message that attests to the identity of the possessor	“A signed digital message that attests to the identity of the possessor. Digital certificates are encrypted in the private key of a well-known master repository.”

ContentGuard proposes that the Court adopt the definition in the glossary for the term “identification certificate:”

A signed digital message that attests to the identity of the possessor. Typically, digital certificates are encrypted in the private key of a well-known master repository.

[’859: 50:17-19].

Defendants’ also base their construction on the glossary definition, but seek to import an additional requirement from the second sentence of the glossary by removing the word “typically.” By including the term “typically” in the second sentence of the glossary, the specification makes clear that the second sentence is optional and not required as part of the definition of an “identification certificate.” Lexicography must appear with “reasonable clarity, deliberateness, and precision sufficient to narrow the definition of the claim term in the manner urged.” *Abbott Labs. v. Syntron Bioresearch, Inc.*, 334 F.3d 1343, 1355 (Fed. Cir. 2003). In this case, the specification makes clear that the second sentence is not a requirement but is simply

associated with one embodiment.⁵

G. Random Registration Identifier / Nonce

Claim Term	ContentGuard's Construction	Defendants' Construction
"random registration identifier"	random or variable information generated to establish a cryptographic connection	"Random and variable information used only once to establish a cryptographic connection."
"nonce"		Alternatively, "random registration identifier" is indefinite

The parties generally agree as to the scope of "nonce" and "random registration identifier," but vary in two important respects. Defendants' construction requires the nonce to be random *and* variable, and to be used *only once*. Defendants' construction could exclude the nonces and random registration identifiers contemplated by the specification, and should therefore be rejected.

Defendants rely on the specification's use of the phrase "random and variable," to describe nonce, but ignore the surrounding explanatory language: "A nonce is a generated message based on some random and variable information (e.g., the time or the temperature)." '956: 27:45-47. Time and temperature are variable, but not random as the term would be understood by persons of ordinary skill in the art. Thus, the term "and" would be understood to mean "and/or." Because Defendants' construction could be argued to exclude the use of time or temperature to generate a nonce or random registration identifier, it must be incorrect. Goodrich Decl. at ¶42-43.

Defendants also urge the court to require that the "nonce" or "random registration identifier" be used "only once," even though this requirement would exclude the embodiments taught by the specification. Both the "random registration identifier" and the "nonce" are used several times in different ways during the registration procedure for repositories: both are generated, stored encrypted, transmitted, received, decrypted, retransmitted, and compared as

⁵ *MasterObjects, Inc. v. Yahoo!, Inc.*, No. C 11-02539-JSW, 2013 U.S. Dist. LEXIS 168296, at *22 (N.D. Cal. Nov. 26, 2013) ("Yahoo! seeks to import a specific limitation from a glossary which is expressly limited to a preferred embodiment. This is not permitted.").

part of the disclosure's embodiment of a registration procedure. ['956: Fig. 16; 26:46-27:64]. Additionally, the disclosure contemplates using computers to implement the disclosed inventions. Computers exchange messages of finite length. Any random number of finite length used as part of such a procedure would with some probability repeat a previously generated random number. That is why the specification does not rely on the random registration identifier alone to secure the message: the repository using the registration identifier also uses the time and the names of the repositories to verify the session. ['956: Fig. 16; 27:37-45, 52-57]. Because Defendants' "used only once" construction could be used to exclude the preferred embodiment, it must be rejected. Goodrich Decl. at ¶44-45.

ContentGuard's construction would encompass the procedure contemplated by the specification by, e.g., allowing the use of time or temperature to generate the nonce, allowing the procedure to be implemented on a computer, and requiring that the nonce or random registration identifier be generated for that communication session. ['956: 26:63-64; Goodrich Decl. at ¶41.].

H. Distributed Repository

Claim Term	ContentGuard's Construction	Defendants' Construction
"distributed repository"	A repository adapted for use in a distributed system	Indefinite

Defendants' proposal that the term "distributed repository" is indefinite is baseless. During the IPR proceedings instituted by ZTE, neither ZTE, nor the PTAB, nor ContentGuard, nor any of the experts retained by the parties expressed any disagreement or uncertainty regarding the meaning of "distributed repository" separate from the meaning of the term "repository." Ex. Q at 22-23. In view of the lack of uncertainty regarding "distributed" before the PTAB, ContentGuard submits that "distributed repository" cannot be indefinite.

ContentGuard does not believe the term "distributed repository" requires a construction separate and apart from the term "repository." If the Court feels some additional detail is necessary, ContentGuard has proposed "a repository adapted for use in a distributed system." The repositories described in the specification are connected as a part of a distributed network or

system such as the internet. *See* ‘859 patent, Figure 2. Thus, the repositories are taught in the patent specification as adapted for use in a “distributed system” because they communicate with each other over a network. *See also* ‘859 patent, claim 1 (implicitly defining a repository as adapted for use in a distributed system); Goodrich Decl. at ¶55.

I. Document Platform

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“document platform”	“any computing system that holds a digital document, such as software”	Indefinite

Defendants’ proposal that the term “document platform” is indefinite is baseless. During the IPR proceedings instituted by ZTE, the PTAB construed “document platform” to be “any computing system that holds a digital document, such as software.” Ex. R at 17. In so holding, the PTAB held that Col. 26:25-29 of the ’072 patent provided “sufficient context to construe the claim term.” *Id.* In reaching its conclusion, the PTAB rejected a narrower construction by ZTE for reading details of the surrounding claim language into its construction. *Id.* at 16. As the PTAB found, the specification provides sufficient context for this term. Goodrich Decl. at ¶56.

J. Claims Where ContentGuard is Seeking Judicial Correction

It is well-settled law that, in a patent infringement suit, the Court may correct an obvious error in a patent claim. *CBT Flint Partners v. Return Path, Inc.*, 654 F.3d 1353, 1358 (Fed. Cir. 2011). A Correction is proper where it is not subject to reasonable debate based on the claim language and the specification and the prosecution history does not suggest a different interpretation. *Novo Industries L.P. v. Micro Molds Corp.*, 350 F.3d 1348, 1357 (Fed. Cir. 2003).

1. The method of claim 1, wherein the validating (’007 Claim 5)

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“validating”	The phrase “The method of claim 1, wherein the validating comprises:” should be corrected to read: “The method of claim 4, wherein the validating comprises:”	Indefinite for lack of antecedent basis.

Claim 5 of the ’007 patent contains an obvious error in that it recites the “method of claim 1” when it should recite the “method of claim 4.” Claims 5, 10, and 15 of the ’007 patent are drafted in parallel, and contain similar limitations directed to a method, an apparatus, and a

computer readable medium. Each recites “the validating.” Claims 10 and 15 depend from claims 9 and 14, respectively, each of which recites the antecedent basis for “validating.” By error, claim 5 depends from claim 1 (which provides no antecedent for “validating”) rather than claim 4 (which does). This obvious error should be corrected so that claims 4-5 parallel their mirror image claims 9-10 and 14-15.

Defendants appear to agree that claim 5 contains an obvious error, and argue that the claim lacks antecedent basis because claim 1 does not recite “validating.” Defendants have not offered an alternative plausible construction, and the prosecution history does not suggest an alternate interpretation of the claims. The Court should correct this obvious error.

2. Determining, by the document platform

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“determining, by the document platform” [Claim 10 of the ’072, Col. 52:56]	“determining by the document platform” should be corrected to: “determining, by the document repository”	Indefinite

In claim 10 of the ’072 patent, the patentee erroneously attributed the “determining” step to the document platform rather than the document repository. The claim itself makes both the error and its correction apparent, and the prosecution history suggests no alternate interpretation.

Prior to the “determining” step, a digital document and at least one usage right associated with the digital document are stored on a document repository and a request to access the document is received from the document platform. The determining step consists of determining, based on the usage right, whether to grant the request, including authenticating the document platform and determining whether the usage right would allow transfer to the document platform. A later step explicitly conditioned on the outcome of the determining step calls for transfer of the digital document and usage right to the document platform. Because the document repository controls the usage right and the digital document at the time of the determining step, and the document platform may only access the usage right once the determining step has concluded, the determining step must be performed by the document repository rather than the document

platform. Goodrich Decl. at ¶57. ContentGuard seeks this correction.

This correction is consistent with the intrinsic record. As explained in the amendment that introduced the error, the document platform is the client-side engagement that controls the digital document. Ex. N at 12. The document repository of claim 10 is a server that controls access of digital documents by clients. The determining step of claim 10 recites the step that decides whether that document repository server will grant access to the client. The error was introduced when other determining steps involving client-side activity were clarified to indicate that those determinations were being performed on the client. Ex. N at 2, 9-10.

K. Grammar

Claim Term	ContentGuard's Construction	Defendants' Construction
"grammar"	A manner of defining a valid sequence of symbols for a language	"A manner of defining a valid sequence of symbols consisting of brackets, bars and braces used to describe the language of usage rights sentences, parentheses used to group items together in lists, keywords followed by colons used to indicate a single value, typically an identifier or list of identifiers, and the suffix 'ID.'" Alternatively, indefinite.

Claim 1 of the '160 patent claims a "usage rights portion being expressed as statements from a usage rights language having a grammar." The parties agree that "grammar" in this phrase should be construed as "a manner of defining a valid sequence of symbols for a language," consistent with how this term is defined in the specification. '160 at 16:61-62. However, Defendants seek to shoehorn additional limitations into the term "grammar" from a subsequent portion of the specification that discusses a particular "notation" that can be used "[i]n describing the grammar" of the preferred embodiment. '160 at 16:63-64. But the term to be construed is "grammar," not the notation for describing a grammar (which is not even recited in the claims), and the patent makes clear there is a difference by discussing them in separate passages (and not, as Defendants propose, in a single sentence). Dictionary definitions also confirm that "grammar" is understood to mean the rules defining valid sequences of symbols for

a language, and not a particular notation for representing those rules.⁶

Defendants' fallback position that "grammar" renders the claim indefinite unless construed to include a particular notation for representing the grammar also misses the mark. The claim is directed to "statements from a usage rights language having a grammar," and the satisfaction of that element turns not at all on the notations that are used to depict the grammar. Indeed, the specification states as much by noting that "brackets, bars and braces are used to describe the language of usage rights sentences but do not appear in actual sentences in the language." '160 at 17:1-4 (emphasis added). As long as the usage rights statements or sentences follow the rules of a grammar, this claim element is satisfied regardless of how those rules are notated (whether in "brackets, bars and braces" or other forms). Goodrich Decl. at 65-67.

L. Description Structure

Claim Term	ContentGuard's Construction	Defendants' Construction
"Description Structure"	A structure which describes the location of content and the usage rights for a digital work that is comprised of description blocks, each of which corresponds to a digital work or to an interest in a digital work.	Any acyclic structure that represents the relationship between the components of a digital work.

ContentGuard's construction for "description structure" is based on the '160 patent glossary definition of the term "description tree," which is one form of a "description structure." '160 at 47:31-36. By contrast, Defendants ignore the glossary and rely on a portion of the detailed description of a preferred embodiment discussing an "acyclic" structure. *See* '160 at 8:8-9. Where the specification sets forth two meanings for a term, the broader meaning should be used.⁷ Here, because the glossary definition does not require the "acyclic" structure recited in

⁶ *See* "grammar," Google.com Dictionary (Ex. S) ("*computing*: a set of rules governing what strings are valid or allowable in a language or text"); American Heritage College Dictionary (Ex. T) at 602 ("A normative or prescriptive set of rules setting forth a standard of usage"); *see also* American Heritage Dictionary (Ex. U) (defining "language" in computer science parlance as a "system of symbols and rules used for communication with or between computers.").

⁷ In construing the term "description structure," the PTAB endorsed this principle but misapplied it, erroneously concluding that the detailed description discussion of an "acyclic" structure was broader than the glossary definition of "description tree." *See* IPR2013-00134, Paper 12 at 19-22. This was error. (Goodrich Decl. at 61.) An "acyclic" structure, which is one that "can be represented with a directed graph having no cycles," is not included or required by the glossary definition of "description tree." (*Id.*) Further, the word "acyclic" is mentioned in only one

the detailed description, the glossary definition is broader and should be adopted.

III. PROPOSED CONSTRUCTIONS FOR THE '280 AND '053 PATENTS (“Meta-Rights Patents”)

A. License

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“license”	data embodying a grant of usage rights and/or meta-rights	A data structure containing both a usage right and meta-right

ContentGuard’s construction is taken directly from the specification, while Defendants propose limitations that are not taught by the specification, let alone the claim language.

First, nothing in the patents requires that a “license” must contain “both a usage right and a meta-right,” as defendants contend. To the contrary, the specification repeatedly uses “and/or” language to make clear that a “license” can embody usage rights, meta-rights, or both: “License 52 includes the appropriate rights, such as usage rights and/or meta-rights, and can be downloaded from license server 50 or an associated device.” ’280 at 5:13-16 (emphasis added). “[The] grant 52b of license 52 can include usage rights and/or meta-rights.” ’053 at 10:15-16 (emphasis added). *See also* ’053 at 4:59-64, 6:66-7:2.⁸ Moreover, the specification at multiple points describes the embodiment of a “usage right” by itself as a “license,” without requiring that it be joined with a meta-right. *See* ’280 at 4:7-8 (“These licenses embody the actual granting of usage rights to an end user”), 4:11-12 (“License 52 can be issued for the view right when the five dollar fee has been paid, for example”), 8:20-24 (stating that a “distributor issues a license for an end user” by “issu[ing] the right to play the book within the U.S. region”) (emphasis added).

In addition, Defendants’ proposal to construe “license” (as well as “meta-right” and “usage right”) as a “data structure” appears to be based primarily on a portion of the specification

place in the specification, which specifically notes that the structure of composite digital works “may be” organized into an acyclic structure (’160 at 7:54-8:9), and other portions of the specification use the word “structure” to refer to tables or non-hierarchical data organizations (’160 at 8:42-44, 8:67-9:3, and 9:45-47). Thus, “description structure” and “description tree” should not be limited to “acyclic” structures. (Goodrich Decl. at 58-64.)

⁸ One sentence in the specification states that “Licenses 52 embody the actual granting of rights, including usage rights and meta-rights, to an end user.” ’053 at 4:40-42. But this merely confirms that the term “right” as used in the ’280 and ’053 patents can mean a “meta-right” or a “usage right”—as both parties agree (see JCC (Dkt. 292) at 2)—and does not require a license to embody both types of rights at the same time.

stating that rights can be expressed in “[1] data structures, [2] symbols, [3] elements, or [4] sets of rules.” ’280 at 7:41-42 (emphasis added). Among other issues, Defendants’ construction is incomplete (it ignores the reference to “symbols,” “elements” and “sets of rules”), and therefore ContentGuard’s construction of “data embodying a grant” is more appropriate.

B. Meta-Right

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“meta-right”	a right that when exercised creates or disposes of usage rights or other meta-rights but is not itself a usage right	A data structure that is used by a repository to create or dispose of ‘usage rights’ or other meta-rights relating to an item of content and is distinct from a usage right associated with the item of content.

ContentGuard’s construction of “meta-right” is based on an express definition in the specification. But while defendants agree with the specification teaching that a meta-right can be used to “create or dispose of” usage rights (or other meta-rights), they seek to graft additional language onto this definition that is nowhere found in the specification and which obscures rather than clarifies the distinction between meta-rights and usage rights.

The specification defines meta-rights as follows: “Meta-rights are the rights that one has to generate, manipulate, modify, dispose of or otherwise derive other rights.” ’280 at 5:47-49; *see also* ’053 at 5:22-23 (“the rights that one has to . . . derive other meta-rights or usage rights.”). Thus, as the Board of Patent Appeals explained in reversing an examiner rejection of a related patent, “[t]he definition for ‘meta-rights’ given in the Specification governs the construction to be given that term in the claims.” Ex. V at 6.⁹ The specification further defines the difference between meta-rights and usage rights:

At a high level the process of enforcing and exercising meta-rights are the same as for usage rights. However, **the difference between usage rights and meta-rights are the result from exercising the rights.** When exercising usage rights, actions to content result. For example usage rights can be for viewing, printing, or copying digital content. **When meta-rights are exercised, new rights are**

⁹ The Board further noted that the examiner mistakenly “relie[d] on a construction of the claim term ‘meta-rights’ which is inconsistent with the definition of that term as expressly provided for in the Specification. Since the claims have not been given the broadest reasonable construction *in light of the Specification*, a prima facie case of obviousness of the *claimed* subject matter has not been established.” (Ex. V at 7) (emphasis in original).

created from the meta-rights or existing rights are disposed as the result of exercising the meta-rights.

'280 at 7:23-31 (emphasis added). These descriptions confirm that, in contrast to usage rights which control access to content, meta-rights control and manage usage rights (or other meta-rights). The figures also confirm this by showing numerous examples of meta-rights exercised to create usage rights without themselves being usage rights. *See, e.g.*, '280 Figs. 9-16 and '053 Figs. 13-20. ContentGuard's construction makes clear that a meta-right is not itself a usage right.

By contrast, Defendants' construction of a "meta-right" as something that "is distinct from a usage right associated with the item of content" uses language that appears nowhere in the specification and is ambiguous at best. Indeed, it is unclear whether Defendants' construction means: (a) that a meta-right is not itself a usage right (in which case ContentGuard's construction is a clearer way of saying that); (b) that a meta-right can be a usage right so long as it is distinct from at least one other usage right associated with the same content (which would be at odds with the distinctions recited in the specification); or (c) something else entirely. Defendants' construction raises more questions than it answers and should be rejected in favor of ContentGuard's proposal, which is clearer and more faithfully reflects the specification.¹⁰

C. Usage Rights and Manner of Use

Claim Term	ContentGuard's Construction	Defendants' Construction
"usage rights"	Same as in Stefik patents, i.e., "an indication of the manner in which a [digital work / digital content / content / a digital document] may be used or distributed as well as any conditions on which use or distribution is premised"	A data structure that persists with digital content and that defines the manner in which the content may be used or distributed, as well as any conditions on which use or distribution is premised.
"manner of use"	Same as in Stefik patents, i.e., "a way in which [a digital work / digital content / content / a digital document] may be used"	Same as in Stefik patents, i.e., "a defined way of using or distributing a digital work (for example, PLAY, COPY, or PRINT), as distinct from conditions which must be satisfied before that way of using or distributing the digital work is allowed."

ContentGuard proposes that "usage rights" and "manner of use" should be construed the

¹⁰ As noted above, Defendants' also propose that "meta-right" (along with "license" and "usage right") be construed to be a "data structure," which is flawed for the reasons noted (*see* Section III(A), *supra*).

same between the Stefik patents and the meta-rights patents. By contrast, Defendants have put forward three separate constructions for “usage rights,” even while acknowledging that “manner of use” must be construed the same across all the asserted patents. Defendants’ scattershot approach will result in jury confusion and does not reflect how a person of skill in the art would understand these patents. From beginning to end, the specification confirms that “usage rights” should be construed the same in both the meta-rights patents and the Stefik patents.

In the background of the invention section, the meta-rights patents recite certain of Dr. Stefik’s patents with regard to “rights specification” and “rights enforcement” mechanisms, stating “the disclosures of which **are incorporated herein by reference**” (emphasis added). ’053 at 1:54-55. Thereafter, the specification refers to usage rights as being specified and enforced through “known” mechanisms, referring back to the Stefik disclosures incorporated by reference. ’053 at 6:24-25, 15:25-27; *see also* ’280 at 5:22-24 (“The interpretation and enforcement of usage rights are well known generally and described in the patents referenced above, for example.”). Thus, contrary to Defendant’s proposed construction, a person of skill in the art would read the term “usage rights” in the meta-rights patents to mean the same usage rights that are described in the Stefik patents.

In support of their contention that “usage right” in the ’053 patent means a right that “persists with the digital content,” Defendants cite to the following paragraph:

U.S. Pat. No. 5,634,012, discloses a **system for controlling the distribution of digital documents**. . . . A predetermined set of usage transaction steps define a protocol used by the repositories for enforcing usage rights associated with a **document**. **Usage rights persist with the document content**. The usage rights can permit **various manners of use such as**, viewing only, **use once**,

’053 at 2:39-44 (emphasis added). As a preliminary matter, it strains credulity to argue—as Defendants do—that this one sentence in the background of the invention section (referring to another patent) amounts to a redefinition of the term “usage rights” in the meta-rights patents. Moreover, this same paragraph also indicates that “digital document” and “digital content” are

interchangeable, and that conditions (such as “use once”) constitute a “manner of use”—yet Defendants do not accept either of those propositions.¹¹ Defendants cannot have it both ways, citing to this portion of the ’053 specification to redefine one term and then ignoring it for others.

D. State Variable

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“state variable”	A variable having a value, or identifying a location at which a value is stored, that represents status of an item, rights, license, or other potentially dynamic conditions	A variable having a value that represents the status of usage rights, license, or other dynamic conditions.
“the at least one state variable identifies a location where a state of rights is tracked”	Ordinary and customary meaning.	Indefinite

ContentGuard’s constructions for “state variable” and related terms are based on the teachings in the specification, which Defendants seek to ignore in support of their flawed indefiniteness contentions. The key issue in dispute is whether a “state variable” can “identify a location at which a value is stored,” as ContentGuard proposes, or whether this functionality should be excluded from the scope of the term—and thereby render indefinite claim limitations that expressly claim such functionality—as Defendants contend.

In the Detailed Description section, the specification of the ’053 patent describes “state variables” as being used to “track potentially dynamic states conditions”(emphasis added), and “having values that represent status of [1] an item, [2] usage rights, [3] license or [4] other dynamic conditions.” ’053 at 5:42-44 (emphasis added); *see also* ’280 at 7:66-68.¹² For example, the specification states that “state variables” can be used to track conditions such as a “right to print content” that “can be exercised three times,” or a usage right “requir[ing] that content is printed within thirty days.” ’053 at 5:47-56.

The specification further explains that a state variable can identify location information,

¹¹ See Section II(B) (“digital content”/“digital document”) and Section II(C) (“manner of use”), *supra*.

¹² Defendants’ construction omits the word “potentially” and the phrase “status of an item,” which are recited in the specification definition and should be included in any construction of the term “state variable.”

describing “a site license” issued to “FooU university” that a librarian may use to create usage rights for individual students, where “usage is tracked by a state variable 1504, e.g., ‘www.fooou.edu.’” ’053 at 18:14-21 (emphasis added) & Fig. 15. Thus, in this example, the state variable “identifies a location” using a URL, which points to a “common state-of-rights server . . . configured as a remote server” to manage shared states. ’053 at 16:21-29 & Fig. 12; *id.* at 17:59-62 (“In this case, a shared state can be managed by an entity that is accessible by all sharing principals.”). *See also* Goodrich Decl. ¶ 68.

The prosecution history confirms that the “state variable” of the ’053 patent can identify a location, for example on a remote server. In particular, when ContentGuard amended the claims of the ’053 patent application to add the requirement that a state variable “identifies” a location where a state is tracked, it stated the following: “a state variable referring to a location on a server can be used to infer that the right is shared among multiple devices.” Ex. W at 13 (citing Fig. 16). Accordingly, “state variables” are taught to encompass both (i) variables “having a value” for tracking a status, and (ii) variables “identifying a location” at which such a value is stored; and claims directed to the latter are not indefinite but rather reflect a preferred embodiment of the patents.

In light of the teachings in the intrinsic evidence, Defendants’ proposed construction of “state variable” impermissibly excludes preferred embodiments and renders unintelligible claims of the ’053 patent that make perfect sense when “state variable” is properly construed. *Accent Packaging, Inc. v. Leggett & Platt*, 707 F.3d 1318, 1326 (Fed. Cir. 2013).¹³

¹³ “A claim interpretation that excludes a preferred embodiment . . . is rarely, if ever, correct.” *See Moneysuite Co. v. Ins. Answer Ctr.*, 2013 U.S. Dist. LEXIS 183408, at *30 (C.D. Cal. Mar. 25, 2013) (“Adopting Defendants’ proposal would make the claims unintelligible, where they are perfectly understandable” otherwise).

E. “Specifying in a first license . . . at least one usage right and at least one meta-right . . . includ[ing] at least one right that is shared . . .”

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“specifying, in a first license . . . at least one usage right and at least one meta-right for the item, wherein the usage right and the metaright include at least one right that is shared among one or more users or devices”	specifying in a first license, at least one usage right and at least one meta-right for the item, wherein at least one of the meta-right or the usage right is shared among one or more users or devices	Indefinite

Without citing any intrinsic evidence whatsoever in their P.R. 4-3 Disclosures (see JCC (Dkt. 292), Ex. B at 23), Defendants contend that this claim element is “indefinite,” when the surrounding claim language and the specification make clear exactly what the claim covers. In particular, the requirement that a license “include” at last one shared right merely means that at least one right specified in the license be shared with other users or devices.

For example, Figure 15 of the ’053 patent illustrates a “first license” to a university (shown on the left as item 1501), specifying a meta-right that in turn specifies a usage right (right to play ebook associated with state variable) that the university can create for individual students.

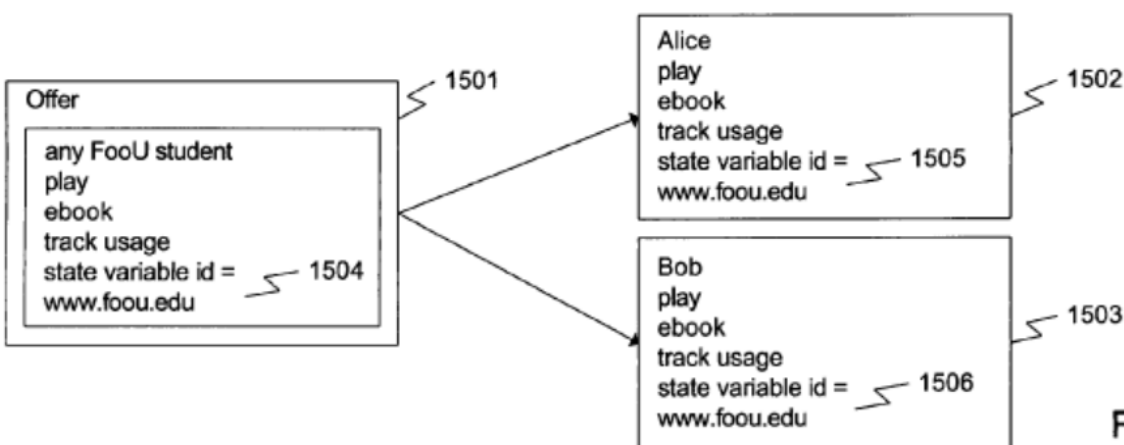


Fig. 15

’053 Fig. 15. In the corresponding description, the specification explains that once this meta-right is exercised to create instances of that usage right for at least two users (in this example, “rights 1502 and 1503 derived from the site license 1501”)—and those rights are associated with a shared state variable identifying a location on a server—the usage right is “shared among a known set of rights recipients, according to the present invention.” ’053 at 18:14-25. Thus,

exactly as the claim language (when properly construed) requires, a usage right specified in the first license has been “shared among one or more users or devices.” ’053 at 20:49-50.

In light of this disclosure, the claim language should be construed to mean that at least one of the meta-right or the usage right in the first license is shared, as ContentGuard proposes. To read the claim otherwise ignores the specification, “the single best guide to the meaning of a disputed term.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

IV. PROPOSED CONSTRUCTIONS FOR THE ’556 PATENT

A. “detect(ing a transfer)”

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“detect(ing) a transfer”	“to discover or determine the existence, presence, or fact of a transfer”	“to discover the occurrence of a transfer”

Both parties are proposing dictionary definitions. ContentGuard’s proposal, which relies on the Merriam-Webster dictionary (<http://www.merriam-webster.com/dictionary/detect>), is slightly broader than Defendants’, and as such should be adopted.¹⁴

B. “instance”

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“instance”	“instantiation”	“a file containing the digital asset that is distinct from other files containing the same digital asset”

The ’556 Patent’s specification and the prosecution history both make clear that the term “instance” is synonymous with “instantiation.” *See, e.g.*, ’556 Patent at cols. 2:32-34, 3:27-28, 3:43-46, 4:24-38, 5:37-44, 6:53-62, 8:23-27, 14:26-31; Exhibit X at 4. (defining “instantiation” as “an instance of an object”). The Court should thus adopt ContentGuard’s construction and reject Defendants’ proposal, which is both unsupported by the evidence and needlessly verbose.¹⁵

¹⁴ *See Cephalon Inc. v. Mylan Pharms. Inc.*, 962 F. Supp. 2d 688, 699-799 (D. Del. 2013) (broad dictionary definition should be adopted absent indication that patentee intended to narrow that definition).

¹⁵ *Encap LLC v. Oldcastle Retail, Inc.*, 2012 U.S. Dist. LEXIS 84472, at *22 (E.D. Wis. June 19, 2012) (“[c]laim construction is not intended to allow for needless substitution of more complicated language for terms easily understood by a lay jury.”); *Am. Patent Dev. Corp. v. Movielink, LLC*, 604 F. Supp. 2d 704, 716 (D. Del. 2009) (refusing to adopt construction which was “merely a verbose paraphrasing of the claim language”).

C. “other portion”

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“other portion”	“an unused part of the digital asset or information prepended or postpended to the digital asset”	“a part of the digital asset wherein embedding information does not affect the user-perceptible portion of content”

In relevant part, claims 1 and 12 of the ’556 Patent teach the “creat[ion]” of a “second instance of the digital asset [that] . . . includ[es] content and at least one *other portion*” and the “embedding” of certain identifying information in “the at least one *other portion*.” The specification teaches that the identifying information to be embedded in the “at least one other portion” can be “prepending or postended” or “alternatively, unused portions of the digital asset could be used.” ’556 Patent at col. 19:36-38. ContentGuard’s proposed construction thus faithfully tracks the disclosure in the specification and should be adopted. In contrast, Defendants’ construction reflects language that is expressly tied to a preferred embodiment (*see* ’556 Patent at col. 3:35-39) that is nowhere present in the claims. As such, Defendants’ construction should be rejected.¹⁶ Notably, during prosecution, the applicants expressly *removed* from the claims the very limitation Defendants are asking the Court to adopt. *See* Ex. Y at 3. This further underscores that Defendants’ error.¹⁷

D. “over said network between user devices”

Claim Term	ContentGuard’s Construction	Defendants’ Construction
“over said network between user devices”	Error – “over said network” should be deleted from both claims 8 and 19	indefinite

The court may correct an error in an issued claim where the error is clear from the face of the patent and neither the claims, nor the specification, nor the prosecution history supports an alternate interpretation. *Novo Industries*, 350 F.3d at 1357. The parties agree that the inclusion of the term “over said network” in claims 8 and 19 of the ’556 is an obvious error. ContentGuard asks the court to correct this error by removing the misplaced language.

¹⁶ *See, e.g., Droplets, Inc. v. eBay, Inc.*, 2014 U.S. Dist. LEXIS 117699, at *20-21 (E.D. Tex. Aug. 22, 2014) (improper to limit claims to preferred embodiments).

¹⁷ *See Elan Corp., PLC v. Andrx Pharms., Inc.*, 2008 U.S. Dist. LEXIS 94525, at *40-41 (S.D. Fla. Aug. 13, 2008).

“Over said network” appears in claims 8 and 19 because it was overlooked in a complicated amendment when similar language was deleted from other claims. Through October 2012, the claims of the ’556 Patent that were pending in the PTO recited the limitation “over an electronic network.” *See* Ex. Y at 2. On August 14, 2013, the applicants filed an Amendment and Response in the PTO, wherein some claims were cancelled, some claims were amended, and some claims were added. *See* Ex. Z. The applicants added two brand-new claims, claims 40 and 43, neither of which recited the “network” limitation. *See* Ex. Z at 6-7. At the same time, the patentee amended claims depending from claims 40 and 43 to remove “over the network,” but mistakenly failed to remove the phrase “over said network” from the claims that issued as claims 8 and 19. Ex. Z at 2-5. The PTO then issued a Notice of Allowance. Claim 40 and 43 were renumbered and now correspond to independent claims 1 and 12 of the ’556 Patent. Due to its clerical error in prosecution, oversight, certain claims that depend from claims 1 and 12—including claims 8 and 19—still contain the phrase “over said network.” To correct this plain error, ContentGuard thus respectfully requests that the Court amend dependent claims 8 and 19 to remove “over said network.”¹⁸

V. MEANS PLUS FUNCTION CLAIM TERMS

ContentGuard proposes that the Court adopt the corresponding structures for the means-plus-function claim terms identified in the attached declaration of Dr. Michael Goodrich. *See* Goodrich Decl. ¶¶ 16-35, 69-72. For the reasons set forth therein, a person of ordinary skill in the art would find that the specification or prosecution history clearly links or associates those structures to the recited functions.

¹⁸ *See Agere Sys. v. Sony Corp.*, 2008 U.S. Dist. LEXIS 39605, at *30-31 (E.D. Tex. May 15, 2008) (conforming the language of the claim to the prosecution history, which removed a certain antecedent basis).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on November 25, 2014.

/s/ Sam Baxter
Sam Baxter