IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

YOUTOO TECHNOLOGIES, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 3:16-CV-00764-N**
	§	
TWITTER, INC.,	§	
	§	
Defendant.	§	

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to the Court's Scheduling Order (Doc. 34) and ¶ 4-3 of Miscellaneous Order No. 62 ("M.O. 62"), plaintiff Youtoo Technologies, LLC ("Youtoo")[1] and defendant Twitter, Inc. ("Twitter") submit this Joint Claim Construction and Prehearing Statement and hereby make the following disclosures.[2]

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[1] Twitter disclosed new proposed constructions for the terms found in rows A, C and F/G of the attached Exhibit A for the first time at 8:22 p.m. on the day this Joint Claim Construction statement is being filed. That is, at no time before the evening of this submission did Twitter disclose to Youtoo any construction that included the phrases (1) "thin client application or web application" (*see* row A); (2) "web-based interface displayed through a browser" (*see* row C); or (3) "communication network interface or application programming interface" (*see* rows F/G). As such, Youtoo reserves the right to object to these untimely proposed constructions and/or submit additional intrinsic and extrinsic evidence in rebutal to such untimely disclosed constructions.

[2] Youtoo complains that Twitter disclosed proposed constructions for certain terms "for the first time" on January 26. Not so. As contemplated by MO 62, Twitter proposed claim constructions but continued to consider its claim constructions based on Youtoo's constructions and the meet and confer. Youtoo *also* ignores that it was Twitter that originally proposed, but withdrew the terms in row (F/G) prior to the exchange of constructions. Although those terms were not on Youtoo's list of terms for construction, Youtoo sought to construe them. Twitter provided its constructions accordingly.

Twitter is submitting its portions of this Joint Claim Construction Statement in compliance with the current case schedule ordered by the Court, but does so subject to its concurrent request for a continuance of the schedule for claim construction exchanges and submission of the Joint Claim Construction Statement based on Youtoo's request to add new accused product to the case only three days before this submission. As explained in Twitter's Opposed Motion For Expedited Relief To Modify Scheduling Order (Dkt. No. 53), Youtoo's request to add a new product—and serve infringement contentions relating to the new accused product at some later date—without giving Twitter an opportunity to consider Youtoo's new contentions prior to claim construction is inconsistent with the orderly process for contentions

A. M.O. 62 ¶ 4-3(a)

There are no agreed-upon constructions.

B. M.O. 62 ¶ 4-3(b)

Regarding M.O. 62 ¶ 4-3(b), Exhibit A sets forth each disputed claim term, phrase, and clause and each party's construction of each disputed term, phrase, and claim, and further, the attached chart sets forth this information "together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which the party intends to rely, either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses." Each party reserves the right to refer to the evidence proffered by the other.

C. M.O. 62 ¶ 4-3(c)

The parties anticipate needing no more than 3 hours for a claim construction hearing.

D. M.O. 62 ¶ 4-3(d)

Neither party proposes to call any witness at the claim construction hearing.

E. M.O. 62 ¶ 4-3(e)

The parties would be happy to provide a tutorial on the technology in the format most helpful for the Court. Given the technology at issue and nature of disputes, the parties respectfully submit that it may be most efficient and helpful to the Court to hold a short (30-min) in-person technology tutorial a week or two before the claim construction hearing or even at the

and claim construction exchanges set forth in M.O. 62 and is prejudicial to Twitter. Accordingly, and as set forth in Twitter's Opposed Motion For Expedited Relief To Modify Scheduling Order, Twitter requests that this submission be stricken and that neither side be permitted to rely on this submission in the case going forward.

start of the hearing itself.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

In accordance with Federal Rule of Civil Procedure 5 and Local Rule 5.1(e), the undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system on January 26, 2017.

/s/ Samuel E. Joyner

Attachment A – Miscellaneous Order 62 ¶ 4-3 Joint Claim Construction and Prehearing Statement

Plaintiff Youtoo Technologies, LLC ("Youtoo") and Defendant Twitter, Inc. ("Twitter") hereby provide the following joint claim construction and prehearing statement pursuant to M.O. 62 ¶ 4-3.[1]

	DISPUTED CLAIM TERM	PLAINTIFF YOUTOO'S PROPOSAL[2]	DEFENDANT TWITTER'S PROPOSAL[3]
A	provid[ing/e] a content capture user interface within displayed instances of a first graphical user interface Claims: 20, 21,	provid[ing/e], in a graphical user interface, an interface that allows a user to record content to a server INTRINSIC EVIDENCE US9083997 [YT000683-703] Figures: 1B, 3, 4 (and respective corresponding disclosures) Text: 2:11-22, 3:3-8, 3:15-24, 3:56-64, 4:22-31, 5:18-19, 5:33-43, 6:1-4, 7:9-21, 8:45-50, 9:4-8, 14:18-44, 10:1-9,	provid[ing/e] a content recorder interface in a thin client application or web application Intrinsic Evidence '997 patent at 2:4-34; 3:3–8; 3:15-25; 3:56-64; 4:22-27; 5:27–33; 6:45-48; 7:4-20; 8:66-9:8; 10:1-16; 14:9–54; 15:1-25; 17:2–8; Figs. 1A, 1B, 3. '304 patent at 2:57-3:13; 4:20-28; 5:24-30; 6:62-7:4;

[1] As used herein, the "'997 patent" refers to the U.S. Patent 9,083,997 to Harwell et al. The "'304 patent" refers to U.S. Patent No. 8,464,304 to Harwell et al. The "'506 patent" refers to U.S. Patent No. 8,601,506 to Harwell et al. The "'382 patent" refers to U.S. Patent No. 8,311,382 to Harwell et al.

[2] Twitter disclosed new proposed constructions for the terms found in rows A, C and F/G of the attached Exhibit A for the first time at 8:22 p.m. on the day this Joint Claim Construction statement is being filed. That is, at no time before the evening of this submission did Twitter disclose to Youtoo any construction that included the phrases (1) "thin client application or web application" (*see* row A); (2) "web-based interface displayed through a browser" (*see* row C); or (3) "communication network interface or application programming interface" (*see* rows F/G). As such, Youtoo reserves the right to object to these untimely proposed constructions and/or submit additional intrinsic and extrinsic evidence in rebutal to such untimely disclosed constructions.

[3] Youtoo complains that Twitter disclosed proposed constructions for certain terms "for the first time" on January 26. Not so. As contemplated by MO 62, Twitter proposed claim constructions but continued to consider its claim constructions based on Youtoo's constructions and the meet and confer. Youtoo *also* ignores that it was Twitter that originally proposed, but withdrew the terms in row (F/G) prior to the exchange of constructions. Although those terms were not on Youtoo's list of terms for construction, Youtoo sought to construe them. Twitter provided its constructions accordingly.

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	DISPUTED CLAIM TERM	PLAINTIFF YOUTOO'S PROPOSAL[2]	DEFENDANT TWITTER'S PROPOSAL[3]
	22, 24, 31, 32	10:9-36, 10:37-57, 10:58-63, 16:67-17:8, 17:9-24, 18:47-60, 23:24-47, 24:61-25:18; *see also* 11:5-39, 14:45-62. <u>13/674,768 [US9083997 FH] [YT000704-1014]</u> E.g., 8/4/14 Office Action at ¶ 3. E.g., 2/6/2015 Am. & Resp. to Office Action at 12. E.g., 2/6/2015 Am. & Resp. to Office Action at 5-9. E.g., 2/9/2015 Terminal Disclaimer filed by Applicant. <u>US8311382 [YT001015-1033]</u> Claims 1, 16, 23. <u>13/475,765 [US8311382 FH] [YT001034-1175]</u> E.g., 9/11/2012 Applicant-Initiated Interview Summary at 1. E.g., 9/18/12 Am. in Reply to Office Action at 2, 5, 7. E.g., 9/18/12 Am. in Reply to Office Action at 9-13. <u>US8464304 [YT000001-40]</u> <u>Figures</u>: 1[130, 110, 124, 122, 142], 3, 14, 16 (and respective corresponding disclosures) <u>Text</u>: 2:57-3:6, 4:38-34, 5:8-23, 6:29-36, 10:7-37, 10:56-59, 12:16-18, 12:45-49, 13:6-9, 14:30-15:15, 17:40-58, 20:4-65, 21:38-22:13. **EXTRINSIC EVIDENCE** OXFORD UNIV. PRESS, A DICTIONARY OF COMPUTING (JOHN DAINTITH & EDMUND WRIGHT EDS., 6TH ED. 2008) [YT001581-1607] at 258-59, 539, 426 ("OXFORD") (defining "interface," "user interface," "record").	6:28-35; 10:56-11:1; 11:20-47; 11:49-63; 11:63-12:11; 12:12-30; 12:49-63; 14:30-63; 14:64-15:8; 18:15-25; 19:25-57; 20:20-30; 21:54-63; 23:58-24:1; 24:40-61; FIGS. 3-15. '304 patent file history, Non-Final Rejection (September 14, 2012 Office Action) (YT000168-YT000213) '304 patent file history, Amendment in Reply to Action of September 14, 2012 (December 14, 2012) (YT000151-YT000167)
B	content capture user interface	*See* construction for "provid[ing/e] a content capture user interface within displayed instances of a first graphical user interface."	*See* construction for "provid[ing/e] a content capture user interface within displayed instances of a first graphical user interface"

	DISPUTED CLAIM TERM	PLAINTIFF YOUTOO'S PROPOSAL[2]	DEFENDANT TWITTER'S PROPOSAL[3]
	Claims: 20, 21, 22, 24, 31, 32		
C	graphical user interface that includes display elements hosted on a web server system Claims: 20, 21, 22, 24, 31, 32	graphical user interface that includes elements from a web server system **INTRINSIC EVIDENCE** <u>US9083997 [YT000683-703]</u> <u>Figures</u>: 1A [116, 150, 120, 127, 155], 1B, 3 (and respective corresponding disclosures) <u>Text</u>: 6:60-67, 7:55-58, 8:42-45, 10:1-9, 10:43-47, 14:9-42, 14:63-15:15, 15:27-67, 16:5-16, 16:26-42, 18:9-46, 20:24-43, 23:60-63, 24:6-9, 26:23-24; *see* 7:1-9, 8:13-41, 8:59-66, 9:28-55; *see also* 6:45-57, 7:63-8:12,13:52-14:8, 17:28-34. <u>US8464304 [YT000001-40]</u> <u>Figures</u>: 1[130, 110, 124, 122, 142], 3, 14, 16 (and respective corresponding disclosures) <u>Text</u>: 2:57-3:6, 5:8-23, 10:7-37, 10:56-59, 14:30-15:15, 17:40-59, 20:4-65, 21:38-22:13. **EXTRINSIC EVIDENCE** OXFORD at 223, 239-40, 258-59, 460, 539, 554, 557-58 (defining "graphical user interface," "HTTP," "interface," "user interface," "web server," "server"). MICROSOFT PRESS, COMPUTER USER'S DICTIONARY (1998) [TWTR-00001691-1704] at 127, 160 ("MICROSOFT") (defining "element" and "graphical user interface")	web-based interface displayed through a browser and hosted on a web server system <u>Intrinsic Evidence</u> '997 patent at 2:4-34; 3:3–8; 3:15-25; 3:56-64; 4:22-27; 5:27–33; 6:45-48; 7:4-20; 8:66-9:8; 10:1-16; 14:9–54; 15:1-25; 17:2–8; Figs. 1A, 1B, 3. '304 patent at 2:57-3:13; 4:20-28; 5:24-30; 6:62-7:4; 6:28-35; 10:56-11:1; 11:20-47; 11:49-63; 11:63-12:11; 12:12-30; 12:49-63; 14:30-63; 14:64-15:8; 18:15-25; 19:25-57; 20:20-30; 21:54-63; 23:58-24:1; 24:40-61; FIGS. 3-15. '304 patent file history, Non-Final Rejection (September 14, 2012 Office Action) (YT000168-YT000213) '304 patent file history, Amendment in Reply to Action of September 14, 2012 (December 14, 2012) (YT000151-YT000167) <u>Extrinsic Evidence</u> Definition of "element," Microsoft Press Computer User's Dictionary (1998), p. 127. (TWTR-00001694) Definition of "web server" (directing to "HTTP server") Microsoft Press Computer User's Dictionary (1998), p. 175. (TWTR-00001704)
D	frame	a window or view in a graphical user interface	an iFrame or other HTML frame embedded within a webpage

	DISPUTED CLAIM TERM	PLAINTIFF YOUTOO'S PROPOSAL[2]	DEFENDANT TWITTER'S PROPOSAL[3]
	Claims: 20, 21, 22, 24, 31, 32	**INTRINSIC EVIDENCE** US9083997 [YT000683-703] Figures: 1B [159], 3 [317] (and respective corresponding disclosures) Text: 9:4-19, 14:9-53, 14:63-15:4, 15:27-62, 18:9-40. **EXTRINSIC EVIDENCE** WEI-MENG LEE, BEGINNING IPHONE® SDK PROGRAMMING WITH OBJECTIVE-C (WILEY PUBLISHING, INC. 2010) [YT001626-1639] (usage of the term "frame" in context of a user interface); For example, among other relevant disclosures, on page 154, this reference provides: "In the previous example, you used the frame property to change the position of a view during runtime. The frame property defines the rectangle occupied by the view, with respect to its *superview* (the view that contains it). Using the frame property allows you to set the positioning and size of a view. . . ." DAVE MARK & JEFF LAMARCHE, BEGINNING IPHONE 3 DEVELOPMENT: EXPLORING THE IPHONE SDK (CLAY ANDRES & DOUGLAS PUNDICK EDS. 2009) [YT001575-1576] (usage of the term "frame" in context of a user interface) SCOTT STEVENSON, COCOA AND OBJECTIVE-C: UP AND RUNNING (BRIAN JEPSON ED. 2010) [YT001579-1580] (usage of the term "frame" in context of a user interface) PETER BAKHIREV ET AL., BEGINNING IPHONE GAMES DEVELOPMENT (CLAY ANDRES ED. 2010) [YT001620-1623] (usage of the term "frame" in context of a user interface)	Intrinsic Evidence '997 patent at 2:4-34; 3:3–8; 3:15-25; 3:56-64; 4:22-27; 5:27–33; 6:45-48; 7:4-20; 8:66-9:8; 10:1-16; 14:9–54; 15:1-25; 17:2–8; Figs. 1A, 1B, 3. '304 patent at 2:57-3:13; 4:20-28; 5:24-30; 6:62-7:4; 6:28-35; 10:56-11:1; 11:20-47; 11:49-63; 11:63-12:11; 12:12-30; 12:49-63; 14:30-63; 14:64-15:8; 18:15-25; 19:25-57; 20:20-30; 21:54-63; 23:58-24:1; 24:40-61; FIGS. 3-15. '304 patent file history, Non-Final Rejection (September 14, 2012 Office Action) (YT000168-YT000213) '304 patent file history, Amendment in Reply to Action of September 14, 2012 (December 14, 2012) (YT000151-YT000167) Extrinsic Evidence Definition of "frame," Microsoft Press Computer User's Dictionary (1998), p. 151. (TWTR-00001696)

	DISPUTED CLAIM TERM	PLAINTIFF YOUTOO'S PROPOSAL[2]	DEFENDANT TWITTER'S PROPOSAL[3]
		OXFORD at 557-58 (defining "window") MICROSOFT at 151 (defining "frame")	
E	the user content management server system Claims: 31, 32	the system that includes the one or more user content management servers **INTRINSIC EVIDENCE** <u>US9083997 [YT000683-703]</u> <u>Figures</u>: 1A, 2A, 2B (and respective corresponding disclosures) <u>Text</u>: Abstract, 2:11-30, 5:12-14, 3:15-35, 3:56-4:5, 6:45-57, 7:21-49, 9:56-10:1, 10:23-35, 11:4-14, 11:40-57, 12:42-62, 12:65-13:1, 15:15-26, 17:9-20, 17:25-34, 23:29-51, 24:67-22; *see also* 11:58-12:41, 13:1-51, 13:52-14:8. <u>US8311382 [YT001015-1033]</u> Abstract, Claims 1, 16, 23. <u>13/475,765 [US8311382 FH] [YT001034-1175]</u> E.g., 9/18/12 Am. in Reply to Office Action at 9-13. <u>US8464304 [YT000001-40]</u> <u>Figures</u>: 1[100], 2[202] (and respective corresponding disclosures) <u>Text</u>: 9:44-10:55, 17:40-58, 13:61-16:24, 20:4-65, 21:38-22:53. **EXTRINSIC EVIDENCE** OXFORD at 460 (defining "server").	plain and ordinary meaning
F	communication interface	application programming interface that provides access to the recording functionality on the user content	communication network interface or application programming interface

	DISPUTED CLAIM TERM	PLAINTIFF YOUTOO'S PROPOSAL[2]	DEFENDANT TWITTER'S PROPOSAL[3]
	between the web server system and the user content management server system Claims: 20, 21, 22, 24	management server system **INTRINSIC EVIDENCE** <u>US9083997 [YT000683-703]</u> <u>Figures</u>: 1A [125, 174] (and respective corresponding disclosures) <u>Text</u>: Abstract, 2:5-18, 3:8-13, 3:15-24, 3:32-35, 3:56-64, 4:2-5, 4:18-31, 5:27-33, 7:34-43, 7:63-65, 8:32-41, 8:51-9:27, 10:26-35, 14:18-44, 15:12-26, 16:43-17:8, 22:32-41, 22:50-53, 22:54-61, 23:24-40, 24:61-25:11; *see also* 13:52-54, 13:64-67. <u>US8311382 [YT001015-1033]</u> Abstract, Claims 1, 16, 23. <u>13/475,765 [US8311382 FH] [YT001034-1175]</u> E.g., 9/18/12 Am. in Reply to Office Action at 9-13. **EXTRINSIC EVIDENCE** OXFORD at 19, 258-59 (defining "application programing interface" and "interface").	<u>Intrinsic Evidence</u> '997 patent at 3:14-36; 4:9-65; 6:45-67; 7:1-20; 8:51-9:27; 10:37-57; 12:42-13:51; 14:9-54; 15:63-16:16; 16:43-17:8; 17:9-24; 19:41-45; 20:24-37; FIGS. 1a, 1b, 2a, 2b, 4. '304 patent at 14:30-15:23; 18:15-26; 20:43-21:27; 21:54-64; 24:62-25:41; 26:5-23; 27:1-20. '382 patent at claims 1, 16, 23.
G	communication interface between the web server system and the one or more user content management servers Claims: 31, 32	application programming interface that provides access to the recording functionality on the one or more user content management servers **INTRINSIC EVIDENCE** <u>US9083997 [YT000683-703]</u> <u>Figures</u>: 1A [125, 174] (and respective corresponding disclosures) <u>Text</u>: Abstract, 2:5-18, 3:8-13, 3:15-24, 3:32-35, 3:56-64, 4:2-5, 4:18-31, 5:27-33, 7:34-43, 7:63-65, 8:32-41, 8:51-9:27, 10:26-35, 14:18-44, 15:12-26, 16:43-17:8,	communication network interface or application programming interface <u>Intrinsic Evidence</u> '997 patent at 3:14-36; 4:9-65; 6:45-67; 7:1-20; 8:51-9:27; 10:37-57; 12:42-13:51; 14:9-54; 15:63-16:16; 16:43-17:8; 17:9-24; 19:41-45; 20:24-37; FIGS. 1a, 1b, 2a, 2b, 4. '304 patent at 14:30-15:23; 18:15-26; 20:43-21:27; 21:54-64; 24:62-25:41; 26:5-23; 27:1-20.

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		22:32-41, 22:50-53, 22:54-61, 23:24-40, 24:61-25:11; *see also* 13:52-54, 13:64-67. US8311382 [YT001015-1033] Abstract, Claims 1, 16, 23. 13/475,765 [US8311382 FH] [YT001034-1175] E.g., 9/18/12 Am. in Reply to Office Action at 9-13. **EXTRINSIC EVIDENCE** OXFORD at 19, 258-59 (defining "application programing interface" and "interface").	'382 patent at claims 1, 16, 23.