

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 12-cv-6781 (RJS)

JOAO CONTROL & MONITORING SYSTEMS, LLC,

Plaintiff,

VERSUS

DIGITAL PLAYGROUND, INC., *et al.*,

Defendants.

No. 12-cv-7734 (RJS)

JOAO CONTROL & MONITORING SYSTEMS, LLC,

Plaintiff,

VERSUS

CITY OF YONKERS, *et al.*,

Defendants.

MEMORANDUM AND ORDER
August 6, 2015

RICHARD J. SULLIVAN, District Judge:

Plaintiff Joao Control & Monitoring Systems, LLC (“JCMS” or “Plaintiff”) brings these consolidated actions against Defendants City of Yonkers (“Yonkers”),

American Traffic Solutions, Inc. (“ATS”), and a group of corporate Defendants referred to throughout this litigation as the “Manwin Defendants” (collectively,

“Defendants”), alleging that Defendants have infringed two of Plaintiff’s patents – U.S. Patent No. 6,587,046, and U.S. Patent No. 7,277,010. Now before the Court are the parties’ cross-motions regarding their proposed constructions of Plaintiff’s patent claims. The following sets forth the Court’s construction of the disputed terms.

I. BACKGROUND

A. Procedural History

Non-party Raymond A. Joao (“Joao”) is the sole named inventor of both U.S. Patent No. 6,587,046 and U.S. Patent No. 7,277,010, each of which seeks to patent a “monitoring apparatus and method.” (*See* Declaration of Rachel N. Bach dated October 10, 2014, Doc. No. 94 (“Bach Decl.”), Ex. 1 (the “046 Patent”); Bach Decl., Ex. 2 (the “010 Patent,” and, collectively with the 046 Patent, the “Patents”).)¹ Joao has assigned each of these patents (along with several others, considered the “JCMS patent family”) to JCMS, a corporation of which he is the sole owner. (Pl. Br. at 2.) Broadly speaking, the Patents relate to “monitoring . . . a premises or vehicle involving at least three processing devices” (Pl. Reply at 1), or, in other words:

a method of transmitting video or other data from a “premises” such as a building

¹ For the sake of clarity, unless otherwise noted, the docket entries referenced herein refer to the docket sheet in *JCMS v. Digital Playground, Inc., et al.*, Doc. No. 12-cv-6781 (RJS) (S.D.N.Y.). In determining the proper construction of the patent claims, the Court has considered Plaintiff’s Opening Claim Construction Brief (Doc. No. 90 (“Pl. Br.”)); the Manwin Defendants’ Claim Construction Response Brief (Doc. No. 93 (“Manwin Br.”)); Defendants ATS and Yonkers’ Claim Construction Response Brief (No. 12-cv-7734 (RJS), Doc. No. 130 (“ATS Br.”)); and Plaintiff’s Reply Claim Construction Brief (No. 12-cv-6781 (RJS), No. 95 (“Pl. Reply”)), as well as accompanying materials filed with those submissions.

or a location within that building (Location A) to a computer server located remote from the “premises,” such as an Internet server elsewhere in the building or in another physical location (Location B), and on to an end-user’s computer or smartphone (Location C), all in response to a “signal” requesting such information sent from the end-user (C).

(Manwin Br. at 3.) Pursuant to 35 U.S.C. § 120, the Patents have priority dates as early as 1996 since they are continuations and continuations-in-part of earlier-filed patents. (*See* Pl. Reply at 2–3.)

On September 7, 2012, Plaintiff filed the complaint in *JCMS v. Digital Playground, Inc., et al.*, No. 12-cv-6781 (RJS), which was superseded by, ultimately, a third amended complaint. (Doc. No. 23.) On October 17, 2012, Plaintiff filed the complaint in *JCMS v. Yonkers, et al.*, No. 12-cv-7734 (RJS), which has been superseded by a second amended complaint. (No. 12-cv-7734 (RJS), Doc. No. 86.) On November 12, 2013, the Court consolidated these two actions for purposes of conducting discovery and pretrial proceedings, including claim construction. (Doc. No. 40.) On August 15, 2014, pursuant to Local Patent Rule 11, the parties filed a Joint Disputed Claim Terms Chart setting forth their respective positions as to the proper construction of the disputed terms. (Doc. No. 89 (the “Claim Chart”).) Plaintiff filed its opening claim construction brief on September 12, 2014 (Doc. No. 90), and claim construction was fully briefed following Plaintiff’s reply on October 31, 2014 (Doc. No. 95).² On the eve of the

² Subsequently, on February 27, 2015, after receiving leave from the Court (No. 12-cv-7734, Doc. No. 157), ATS and Yonkers filed a sur-reply with respect

Markman hearing, Defendants filed a letter “accepting Plaintiff’s latest proposed definitions” of seven claim terms, in the interest of efficiency and to allow the parties to focus on more important terms. (No. 12-cv-7734, Doc. No. 182.) The Court conducted a claim construction hearing on May 1, 2015, at which Plaintiff and each set of Defendants were allotted one hour to present their case. (See Transcript of Proceedings dated May 1, 2015, Doc. No. 117 (“Claim Construction Tr.”).) The Court reserved ruling on the disputed terms (see Claim Construction Tr. at 105:9), and resolves the parties’ claim construction disputes herein.

B. Legal Standard

“It is a bedrock principle of patent law that the claims of a patent define the invention. . . .” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004). The construction of patent claims, which includes the definition of disputed terms therein, is a legal question to be determined by the Court. See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384 (1996). The terms in a claim “are generally given their ordinary and customary meaning,” which is “the meaning the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (citations and internal quotation marks omitted). For these purposes, “the person of ordinary skill in the art is deemed to have read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.* at 1313. Moreover, where the claim terms are “readily apparent even to lay judges,” claim

construction “involves little more than the application of the widely accepted meaning of commonly understood words.” *Id.* at 1314. However, a patentee may act as “his own lexicographer and use terms in a manner *other* than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (emphasis added); see also *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002) (“[A]n inventor may choose to be his own lexicographer if he defines the specific terms used to describe the invention with reasonable clarity, deliberateness, and precision. Such a definition may appear in the written description or in the prosecution history.” (citations and internal quotation marks omitted)). The prosecution history includes “the complete record of the proceedings before the [Patent and Trademark Office] and includes the prior art cited during the examination of the patent.” *Phillips*, 415 F.3d at 1317.

In determining the meaning of claim terms, courts “must begin and remain centered on the claim language itself.” *Innova/Pure Water, Inc.*, 381 F.3d at 1116. In addition, courts must look to “the written description, the prosecution history, and, finally, any relevant extrinsic evidence.” *Zircon Corp. v. Stanley Black & Decker, Inc.*, 452 F. App’x 966, 972 (Fed. Cir. 2011); see also *Vitronics Corp.*, 90 F.3d at 1582 (“First, we look to the words of the claims themselves, both asserted and nonasserted, to define the scope of the patented invention. . . . [S]econd, it is always necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning. . . . Third, the court may also consider the prosecution history of the patent, if in evidence.”); *id.* at 1583 (“In those cases where the public record unambiguously describes the scope of the

to Plaintiff’s expert declaration (No. 12-cv-7734, Doc. No. 163).

patented invention, reliance on any extrinsic evidence is improper.”); *Joao v. Sleepy Hollow Bank*, 418 F. Supp. 2d 578, 580 (S.D.N.Y. 2006) (“The meaning of a claim should be interpreted in light of the intrinsic evidence, comprised of the claims and the specification of the patent, and the prosecution history.”), *aff’d sub nom. Joao Bock Transaction Sys., LLC v. Sleepy Hollow Bank*, 445 F. App’x 359 (Fed. Cir. 2011). Significantly, “[w]hile claims often receive their interpretative context from the specification and the prosecution history, courts may not read limitations into the claims.” *Rambus Inc. v. Infineon Technologies Ag*, 318 F.3d 1081, 1088 (Fed. Cir. 2003); *see also Kwik Products, Inc. v. Nat’l Exp., Inc.*, 356 F. Supp. 2d 303, 315 (S.D.N.Y. 2005) (“In construing a claim, the court *may not* import an additional limitation into the claim. It is an entirely appropriate practice, however, for the court to look to the specification to aid its interpretation.” (emphasis added)), *aff’d*, 179 F. App’x 34 (Fed. Cir. 2006). While the consultation of extrinsic evidence is often unnecessary, dictionaries are nevertheless “worthy of special note. Judges are free to consult such resources at any time in order to better understand the underlying technology and may also rely on dictionary definitions when construing claim terms, so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents.” *Vitronics Corp.*, 90 F.3d at 1585 n.6; *see also Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1300 (Fed. Cir. 2003) (“In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.”). Furthermore, “claims are interpreted with an eye toward giving effect to all terms in the claim.” *Bicon, Inc. v.*

Straumann Co., 441 F.3d 945, 950 (Fed. Cir. 2006).

It should also be noted that, at this stage of the proceedings, the patent laws impose a definiteness requirement on claims and claim terms. *See* 35 U.S.C. § 112(b) (requiring that claims “particularly point[] out and distinctly claim[] the subject matter” of the invention). Specifically, “[b]ecause claims delineate the patentee’s right to exclude, . . . the scope of the claims [must] be sufficiently definite to inform the public of the bounds of the protected invention, i.e., what subject matter is covered by the exclusive rights of the patent.” *Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1249 (Fed. Cir. 2008); *see also Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2123 (2014) (“[A] patent must be precise enough to afford clear notice of what is claimed, thereby apprising the public of what is still open to them.” (citation, alterations, and internal quotation marks omitted)). “[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus*, 134 S. Ct. at 2124. In evaluating a claim for indefiniteness, courts must be mindful of the “inherent limitations of language,” and understand that “[s]ome modicum of uncertainty . . . is the price of ensuring the appropriate incentives for innovation.” *Id.* at 2128 (internal quotation marks omitted). Because a “determination of claim indefiniteness is a legal conclusion that is drawn from the court’s performance of its duty as the construer of patent claims,” courts may evaluate indefiniteness at the claim construction stage. *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005) (internal quotation marks omitted), *abrogated on other grounds by Nautilus*, 134 S. Ct. 2120. However, courts also have the discretion to decline to decide claim indefiniteness at this stage and

instead resolve such a question in connection with summary judgment. *See Indus. Tech. Research Inst. v. LG Electronics Inc.*, No. 3:13-cv-02016 (GPC), 2014 WL 6907449, at *3 (S.D. Cal. Dec. 8, 2014) (analyzing the proper procedural stage to resolve claim indefiniteness and “reaffirm[ing] that [the court] has discretion as to when to determine indefiniteness during patent case proceedings.”). Here, to the extent Defendants’ indefiniteness arguments stem from the inherent vagueness or ambiguity of certain specific *terms*, the Court resolves such disputes now, but to the extent such assertions relate instead to the indefiniteness of entire *claims*, the Court reserves ruling until the summary judgment stage.

II. DISCUSSION

A. Whether Joao Acted as His Own Lexicographer

As a threshold matter, the parties devote much of their briefs to the issue of whether Joao acted as his own lexicographer in submitting “remarks” to the United States Patent and Trademark Office (the “USPTO”) in the course of prosecuting the ‘010 Patent. Specifically, after briefing claim construction in an unrelated litigation involving the ‘046 Patent, Joao submitted “unsolicited ‘remarks’” to the USPTO in which he purported to define terms found in the ‘010 Patent in the same manner urged by Plaintiff in briefing claim construction in that pending litigation. (*See* Manwin Br. at 7; ATS Br. at 9.) These remarks were given to the USPTO *after* the ‘046 Patent issued and more than three years into the prosecution of the ‘010 Patent. (Manwin Br. at 7.) According to Plaintiff, because these remarks are part of the prosecution history for the ‘010 Patent, Joao acted as his own lexicographer with respect to certain terms in the ‘010 Patent, and because the inventorship and specifications of the two Patents are identical, the definitions

submitted in the “remarks” are intended to apply equally to the ‘046 Patent.

As to the ‘010 Patent, the Court finds that Joao clearly acted as his own lexicographer with respect to the terms he defined in his “remarks” to the USPTO. As noted above, in order to act as one’s own lexicographer, an inventor need only “define[] the specific terms used to describe the invention with reasonable clarity, deliberateness, and precision . . . in the written description *or in the prosecution history.*” *Teleflex*, 299 F.3d at 1325 (emphasis added) (citation and internal quotation marks omitted). There is no dispute that the “remarks” Joao submitted to the USPTO are part of the prosecution history for the ‘010 Patent, and although Defendants question his motives – noting that the constructions contained in the “remarks” simply echoed the constructions proposed in the claim construction brief of an unrelated case – for purposes of claim construction, the “remarks” appear sufficiently clear, deliberate, and precise. Furthermore, Defendants have offered no authority – and the Court is not aware of any – for the proposition that Joao’s right to act as his own lexicographer while prosecuting the ‘010 Patent should be undermined by the fact that the definitions he submitted came from a litigation in which he was involved.

Additionally, with respect to the ‘046 Patent, although “the inventor [cannot] by later testimony change the invention and the claims from their meaning at the time the patent was drafted and granted,” *Voice Technologies Grp., Inc. v. VMC Sys., Inc.*, 164 F.3d 605, 615 (Fed. Cir. 1999), an inventor’s own words are certainly relevant to a term’s proper construction, as long as such evidence does not directly contradict the plain meaning of the term at issue. *See, e.g., Vitronics*, 90 F.3d at 1584 (“[I]n [instances in which intrinsic evidence alone does not enable the court to determine a term’s meaning], extrinsic evidence . . . may

also properly be relied on to understand the technology and to construe the claims. Extrinsic evidence is that evidence which is external to the patent and file history, such as expert testimony, *inventor testimony*, dictionaries, and technical treatises and articles.” (emphasis added) (citations omitted)); *Voice Technologies*, 164 F.3d at 615 (statement that inventor’s subjective intent is entitled to minimal weight “does not disqualify the inventor as a witness, or overrule the large body of precedent that recognizes the value of the inventor’s testimony”). Moreover, while courts recognize the risk of crediting the statements of an inventor made in the course of a litigation – see *Bell & Howell Document Mgmt. Products Co. v. Altek Sys.*, 132 F.3d 701, 706 (Fed. Cir. 1997) (“The testimony of an inventor often is a self-serving, after-the-fact attempt to state what should have been part of his or her patent application.”) – here, the “remarks” were *not* submitted in support of a litigation, but rather were submitted directly to the USPTO in support of an application for a patent with the *same specification* as that being litigated. Additionally, the “remarks” were supported by citations to the shared specification, and at least disclaim any attempt to *redefine* the terms at issue vis-à-vis previously issued patents in the JCMS patent family. Accordingly, the Court considers the “remarks” as extrinsic evidence for purposes of construing the terms of the ‘046 Patent, to the extent those remarks do not directly contradict the plain meaning of those terms and such terms cannot be construed without the aid of extrinsic evidence.

B. Claim Construction

Altogether, the parties dispute the meaning of sixteen different claim terms.³

³ With respect to the terms referenced in Defendants’ April 25, 2015 letter (Case No. 12-cv-7734 (RJS), Doc. No. 182), which stipulates to Plaintiff’s definitions of seven claim terms, the Court accepts

Some of the terms are present in claims asserted against only one set of Defendants, and for some of the terms, one of the sets of Defendants agrees with Plaintiff, such that the dispute is only with respect to one of the two actions involved here. Additionally, ATS asserts that three of the terms – “remote,” “premises,” and “located at a premises” – are so vague and ambiguous that the claims in which they are found are indefinite as a matter of law. In any event, the Court proceeds with the construction of claim terms in the order in which they are presented in the parties’ Claim Chart.

Processing device: “Processing device” is one of the terms Joao defined in his “remarks” to the USPTO. (See Pl. Br. at 10–11.) He defined the term as “a device or a computer, or that part of a device or a computer, which performs an operation, an action, or a function, or which performs a number of operations, actions, or functions.” (*Id.*, Ex. A (“First Remarks”) at 2.) Plaintiff and the Manwin Defendants have offered the same proposed construction here. (Claim Chart at 1.) In contrast, ATS and Yonkers propose that the term be construed as “a device that processes ‘signals’ (and, further, in the case of vehicles, is connected to the vehicle ignition system).” (*Id.*) As Joao acted as his own lexicographer with respect to the ‘010 Patent, the Court construes this term in the ‘010 Patent in line with Joao’s “remarks.” Moreover, even with respect to the ‘046 Patent, the Court finds the construction proposed by ATS and Yonkers to be unduly narrow and unclear. That is, it is not entirely obvious what it would mean to “process signals,” and, in any event, the plain language of the claims at issue makes clear that a “processing device” in the ‘046 Patent does more than simply “process signals.” Specifically, claim 15 of the ‘046 Patent claims an

the parties’ stipulated definitions and does not revisit such terms herein.

apparatus wherein the processing device does at least one of the following:

[1] *receives video information* from any number of at least one of [a] video recording devices and [b] cameras, [2] *receives audio information* from any number of at least one of [a] audio recording devices, [b] microphones, and [c] tape recorders, [and/or 3] *receives video conferencing information* from any number of video conferencing devices, and further wherein the processing device *transmits* [the same], to the communication device on or over at least one of the Internet and the World Wide Web.

(‘046 Patent, 109:66–110:13 (emphases added).) Thus, a processing device *receives* different types of information from various sources and *transmits* such information to devices over multiple platforms. The consistently broad use of the term “processing device” demonstrates the term’s broad meaning, and shows that the proposal of ATS and Yonkers is overly narrow. This broad usage and Joao’s “remarks” also reflect that the term, in the context of the family of patents at issue here, means more than simply a device that processes signals insofar as it performs the other functions referenced in the claims.

Moreover, the Court finds that there is no support for the broad limitation that, “in the case of vehicles, [a processing device] is connected to the vehicle ignition system,” which ATS and Yonkers read into the term. For example, claim 1 involves a monitoring apparatus for a vehicle, “wherein the processing device is located at a location remote from the vehicle.” (*Id.*, 109:2–8.)

Indeed, *none* of the claims of the ‘046 Patent involving a vehicle contain any suggestion that the processing device must be connected to an ignition system.

Accordingly, the Court construes “processing device” to mean “a device or a computer, or that part of a device or a computer, which performs an operation, an action, or a function, or which performs a number of operations, actions, or functions.”⁴

Web site: The term “web site” is found in a number of claims asserted against Defendants. Plaintiff proposes that the Court simply give the term its plain and ordinary meaning as understood by a person of ordinary skill in the art, or, alternatively, that the Court construe it to mean “one or more Web pages employing an HTML protocol (or a variation thereof).” (Claim Chart at 6.) By contrast, ATS and Yonkers propose “one or more pages or files accessible by the ‘Internet’ or the ‘World Wide Web,’” while the Manwin Defendants propose “a page or file location accessible through the Internet or the World Wide Web.” (*Id.*) Thus, in large part, the dispute centers around whether a web site is accessible on *either* the World Wide Web *or* the internet, or whether a web site is accessible by the World Wide Web *alone*.

⁴ The Court notes, however, that the construction given to this term is very broad – and, in fact, does not even use the word “process” – which may result in challenges as to the breadth of the claims at a later stage of these proceedings. *See, e.g., MagSil Corp. v. Hitachi Global Storage Technologies, Inc.*, 687 F.3d 1377, 1381 (Fed. Cir. 2012) (“[Doctrine of enablement] prevents both inadequate disclosure of an invention and overbroad claiming that might otherwise attempt to cover more than was actually invented. Thus, a patentee chooses broad claim language at the peril of losing any claim that cannot be enabled across its full scope of coverage.”).

While perhaps not immediately apparent to those not well-versed in technology, the distinction between the World Wide Web and the internet is an important one. Specifically, as the parties agree, the World Wide Web is simply one of many services *available* on the internet. (See Claim Construction Tr. at 54:9–11, 100:8–11.) Moreover, the plain meaning of “web site” involves availability on the World Wide Web, *see* Dictionary.com Unabridged, “Website,” *available* at <http://dictionary.reference.com/browse/web-site> (last visited August 4, 2015), which the Manwin Defendants acknowledge (*see* Claim Construction Tr. at 54:10–13). Nevertheless, Defendants assert that the Patents *in fact* equate the two concepts by using them interchangeably as synonyms, such that a person skilled in the art who has read the Patents in full would interpret the terms “World Wide Web” and “web site” more broadly than Plaintiff now contends. As evidence of this construction, Defendants cite the fact that the specifications of the Patents, and the claims asserted, consistently reference information transmission “on or over at least one of the Internet and the World Wide Web.” (See, e.g., ‘046 Patent, 111:28–31.) However, the mere fact that information can be transmitted over *either* the World Wide Web *or* the internet more generally does not, alone, render those two terms synonymous. There is simply no support for the proposition that the Patents use these two concepts in a manner that would depart from their ordinary definitions. Notwithstanding this conclusion, the Court departs from Plaintiff’s highly technical proposal involving “HTML protocols” and variations thereof, and finds that availability on the World Wide Web is the relevant distinguishing characteristic.

Accordingly, the Court construes “web site” to mean “one or more pages or file locations accessible by the World Wide Web.”

Remote: Many of the claims asserted against Defendants include the term “remote.” Plaintiff and the Manwin Defendants propose a construction of “separate and apart from,” while ATS and Yonkers assert that the term is so vague and ambiguous as to render any claim that includes it void as indefinite. (Claim Chart at 8–9). In the event the Court does not find “remote” to be impermissibly vague and ambiguous, ATS and Yonkers agree with the other parties that the best construction is “separate and apart from.” (Claim Chart at 8–9.)

The Court finds that the term “remote” is not so vague as to render the claims inherently indefinite. *See Eidos Display, LLC v. AU Optronics Corp.*, 779 F.3d 1360, 1364 (Fed. Cir. 2015) (noting that a claim is “invalid for indefiniteness if its language, when read in light of the specification and prosecution history, ‘fails to inform, with reasonable certainty, those skilled in the art at the time the patent was filed about the scope of the invention’” (alterations omitted) (quoting *Nautilus*, 134 S. Ct. at 2124)) Indeed, the mere fact that being separate does not inform a reader as to “how much or what type” of separation is required does not, alone, render the term impermissibly ambiguous. Rather, the Court finds that a construction of “separate and apart from” – whereby the actual distance of separation is *irrelevant* – sufficiently “inform[s] those skilled in the art about the scope of the invention with reasonable certainty.” *See Nautilus*, 134 S. Ct. at 2129. The dispute as to indefiniteness having been resolved, the parties ultimately agree as to the proper construction of “remote,” which tracks the definition provided by Joao in his “remarks” for the ‘010 Patent, for which he acted as his own lexicographer. (See Pl. Br. at 15.)

Accordingly, the Court construes the term “remote” to mean “separate and apart from.”

Transmitter: At the *Markman* hearing, Plaintiff stipulated to Defendants' construction of this term. (Claim Construction Tr. at 99:5–6.) Accordingly, the Court construes “transmitter” to mean “a device or system that transmits.”

Premises: The term “premises” is found in many of the claims asserted against all Defendants. Defendants ATS and Yonkers object to this term as being impermissibly vague and ambiguous, such that every claim that includes it is indefinite. (*See* Claim Chart at 15). However, they have offered little in support of their contention beyond the assertion that “the precise contours of the term [premises] depend on the context in which it is used,” and that in the “specific context of the [Patents], these terms are particularly vague, ambiguous, and indefinite.” (ATS Br. at 18.) However, Defendants' objection is focused more on the *breadth* of Plaintiff's proposed construction than on any perceived vagueness that inheres in the term as it is used in the Patent. Indeed, the Court finds that the term “premises” is *not* so ambiguous as to fail to inform those skilled in the art about the scope of the invention, both because the term was specifically defined by Joao in the course of prosecuting the '010 Patent and because the term clearly has a sufficiently specific meaning.

Thus, the Court turns to the proposed constructions offered by Plaintiff and the Manwin Defendants, on the one hand, and ATS and Yonkers – which submitted an alternative definition in case the Court found the term to be sufficiently definite – on the other. Plaintiff and the Manwin Defendants propose that “premises” be construed to mean:

A building or a structure and the grounds or parcel of land associated with the building or the structure, or a building or structure, or a portion,

room, or office, of or in the building or structure, or a home, mobile home, mobile building, mobile structure, residence, residential building, office, commercial building, commercial office, structure, equipment, facility, machine, rig, assembly line, or edifice.

(Claim Chart at 15–16.) For their part, ATS and Yonkers propose that the term be defined as “a residential or commercial building, or a portion, room, or office of or in a residential or commercial building.” (*Id.*) With respect to the '010 Patent, Joao clearly and explicitly defined this term in the prosecution history and thus acted as his own lexicographer, so Plaintiff's proposed construction will be adopted. Additionally, with respect to the '046 Patent, the Court finds the construction proposed by ATS and Yonkers to be unduly restrictive. Nothing inherent in the word “premises” – as that term would have been understood by someone skilled in the art at the time of the invention – would limit “premises” to a residential or commercial building, or a portion thereof, as ATS and Yonkers propose. Rather, “premises” is more aptly defined to include land and all structures thereon. However, with respect to the '046 Patent, it would defy the plain language of the term “premises” to allow “equipment,” a “machine,” a “rig,” or an “assembly line” to constitute a “premises” unless such equipment, machine, rig, or assembly line is attached to the land or structure otherwise constituting a “premises,” and so the Court modifies the construction in the '046 Patent.

Accordingly, the Court construes “premises” to mean “a building or a structure and the grounds or parcel of land associated with the building or the structure, or a building or structure, or a portion, room, or office, of or in the building or structure, or a home, mobile home, mobile building,

mobile structure, residence, residential building, office, commercial building, commercial office, structure, equipment, facility, machine, rig, assembly line, or edifice,” except that with respect to the ‘046 Patent, any equipment, machine, rig, or assembly line constitutes a “premises” only if it is attached to the land or structure otherwise constituting a “premises.”

Located at a premises: In addition to defining the term “premises,” Joao’s “remarks” to the USPTO also defined the term “located at” to mean “situated at, or situated in, or situated on.” (See Pl. Br. at 28.) This, in conjunction with Plaintiff’s construction of “premises,” results in Plaintiff’s proposed construction:

[S]ituated at, or situated in, or situated on a building or a structure and the grounds or parcel of land associated with the building or structure, or a building or structure or a portion, room, or office, of or in the building or structure, or a home, mobile home, mobile building, mobile structure, residence, residential building, office, commercial building, commercial office, structure, equipment, facility, machine, rig, assembly line, or edifice.

(Claim Chart at 16–17.) The Manwin Defendants propose that the Court simply give this term its “plain and ordinary meaning as understood by a person of ordinary skill in the art” (*id.*), but acknowledge that “located at, in, or on a particular spot” would be acceptable (Manwin Br. at 35.) In contrast, ATS and Yonkers assert that this term is vague and ambiguous, such that any claims that include it are void for indefiniteness, or, in the alternative, that it means “attached to a ‘premises.’” (Claim Chart at 16–17.) The

Court has already concluded that “premises” is not impermissibly vague and ambiguous, and because the purported ambiguity of that term forms the basis for ATS and Yonkers’ indefiniteness argument here, the Court finds against ATS and Yonkers with respect to this claim term as well.

As to the ‘010 Patent, Joao acted as his own lexicographer with respect to “located at” and, as noted above, with respect to “premises.” (See Pl. Br., Ex. B (“Second Remarks”) at 3–4.) However, rather than transcribing the entire definition of “premises” as proposed by Plaintiff, the Court adopts Joao’s definition of “located at” and incorporates the definition of “premises” by reference. With respect to the ‘046 Patent, the Court finds that there is no support for the requirement proposed by ATS and Yonkers that being “located at” a premises means being “attached” to the premises. Indeed, the passages of the specification that ATS and Yonkers cite for such a requirement simply do not limit “located at” in such a manner. (See ATS Br. at 24 (citing various lines of the Patents’ specifications).)

Accordingly, the Court construes “located at a premises” to mean “situated at, or situated in, or situated on a ‘premises.’”

Located at a vehicle: This term appears in several of the claims asserted against ATS and Yonkers. Plaintiff asserts that it should be construed to mean “situated at, situated in, or situated on a vehicle.” (Claim Chart at 7.) In contrast, ATS and Yonkers contend that the construction must be “attached to a vehicle.” (*Id.*) As noted above, Joao acted as his own lexicographer with respect to the ‘010 Patent in defining the phrase “located at” as “situated at, situated in, or situated on.” (Pl. Br. at 30.) Additionally, with respect to the ‘046 Patent, as with the term “located at a premises,” the Court finds no support in the specification or claims for a limitation that something must be *attached*

to a vehicle for it to be “located at” the vehicle.

Thus, the Court construes “located at a vehicle” to mean “situated at, situated in, or situated on a vehicle.”

Storage Medium: The term “storage medium” is found in claims 71 and 202 of the ‘010 Patent and claims 5 and 34 of the ‘046 Patent. Plaintiff proposes that the term be construed to mean “a device, apparatus or component on which data is stored in permanent or semi-permanent form,” while Defendants propose that the term be defined as “any device or component of a device capable of storing content.” (Claim Chart at 18.) Thus, the four disputes as to the parties’ proposed constructions are (1) whether a storage medium is a “device, apparatus or component” or simply a “device or component”; (2) whether the storage medium stores “data” or “content”; (3) whether data/content “is stored” or whether the medium simply must be “capable” of storing data/content; and (4) whether there is any temporal restriction inherent in the definition. The parties agree that the final discrepancy is the most substantial of the four. (*See* Claim Construction Tr. at 36:4–8, 39:3–6, 57:7–15, 99:13–14.)

As to whether a storage medium is a “device, apparatus or component,” or merely a “device or component,” the Court finds that the latter construction is more appropriate. Indeed, to the extent that “apparatus” is any broader than “device” in this context, the term “storage medium” is simply not used in the Patents in a manner that would extend beyond “device,” and to the extent that the words are synonymous in context, the Court omits the redundancy. *See Merck & Co. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”).

As to whether a storage medium stores “data” or “content,” the Court finds “content” to be unnecessarily unclear and “data” to be more precise. Moreover, storage of “data” is more consistent with how the term is used in the specification. (*See, e.g.*, ‘010 Patent, 63:8–14 (“[T]he data can be stored and/or overwritten for a given time period . . . , storing same in a looping and/or re-circulating storage medium. . . .”).

With respect to whether a storage medium is a device or component “on which data is stored” versus a device or component “capable of storing data,” the Court finds that the latter construction is clearly correct, because a device or component can be a storage medium whether or not any data is presently stored on it.

Finally, with respect to whether “storage medium” has any temporal restriction, the Court finds that it does not. The parties’ dispute centers on whether the capability of storing data in a merely transitory way renders a device or component a “storage medium.” Specifically, Defendants contend that a device or component can be a storage medium if it is capable of storing data for *any* amount of time, even if such storage would merely be transitory, as in the context of video data in a “buffer” or RAM cache. (*See* Manwin Br. at 22.) On the other hand, by including the phrase “permanent or semi-permanent,” Plaintiff asks the Court to construe a storage medium to require the capacity to store in a non-transitory way, such that video data in a “buffer” or RAM cache would *not* be included. According to Plaintiff, the requirement that data be stored in a non-transitory way is supported by the manner in which “storage medium” is used throughout the specifications. For example, the specifications note that a camera “may also be equipped with a storage medium, for storing the recorded video and/or picture(s), and a transmitter or transceiver for transmitting the stored video and/or picture(s) to the user or operator at a later

time. In this manner, real-time, as well as deferred, video and/or picture(s) transmissions may be provided.” (’010 Patent, 66:18–25.) Thus, Plaintiff asserts, this use of a storage medium to allow transmission *at a later time* suggests that the storage medium referenced in the Patents is one that allows storage above and beyond that implicated by a computer’s cache. However, there is simply no temporal limitation implicit in the term “storage medium.” Rather, the specification references storing data in a storage medium to encompass a wide variety of types of storage (*see id.*, 63:3–14), and, in any event, the Court cannot read limitations from the specification into the claims, *Rambus*, 318 F.3d at 1088. Moreover, as the Court noted at the *Markman* hearing, the phrase “in permanent or semi-permanent form” would seemingly need to be construed *itself*, because the meaning of “semi-permanent,” as contrasted with “transient,” is far from obvious. (Claim Construction Tr. at 37:20–24.)

Accordingly, the Court construes “storage medium” to mean “any device or component of a device capable of storing data.”

Stored video: The term “stored video” is also found in claims 71 and 202 of the ’010 Patent and claims 5 and 34 of the ’046 Patent. Plaintiff proposes that the term be construed to mean “‘video information’ that has been placed on or in a storage medium,” while Defendants propose that the term be defined as “‘video information’ that has been recorded on any medium for any period of time.” (Claim Chart at 19.) With respect to the distinction between “placed” and “recorded,” the Court finds that Defendants’ construction conflates the storing and recording functions, which are treated as distinct in the Patents. (*See* ’010 Patent, 66:17–25 (“The video recording device(s) or camera(s) may record and/or transmit the recorded video and/or the

picture(s) in real time and/or live. The video recording device(s) or camera(s) may also be equipped with a storage medium, for storing the recorded video and/or picture(s), and a transmitter or transceiver for transmitting the stored video and/or picture(s) to the user or operator at a later time.”)); *see also Bicon, Inc.*, 441 F.3d at 950 (“[C]laims are interpreted with an eye toward giving effect to all terms in the claim.”). However, the Court also agrees with the Manwin Defendants that the word “placed” is unclear and has no obvious meaning in the context of the storing of digital content. (*See Manwin Br.* at 17.) Accordingly, the Court construes “stored video” to employ the word “retained” in place of the parties’ proposals of “recorded” or “placed.”

With respect to the dispute over whether “stored video” must be saved on a storage medium, the Court finds that it must. The specifications of the Patents consistently reference “stored video” to mean video that is stored on a storage medium (*see, e.g.*, ’010 Patent, 74:12–16 (“The video recording device(s) or camera(s) may also be equipped with a storage medium, for storing the recorded video and/or picture(s), and a transmitter or transceiver for transmitting the stored video and/or picture(s) to the user or operator at a later time.”)), and Defendants’ use of the phrase “any medium” is unnecessarily vague.

Accordingly, the Court construes “stored video” to mean “‘video information’ that has been retained on or in a storage medium.”

All forms of “to record”: Forms of the term “to record” appear in many of the claims asserted in these actions. Plaintiff proposes the construction, “to capture ‘video information’ on any kind of medium for any period of time,” while Defendants propose, “to store content on any medium for any period of time.” (Claim Chart at 20.) Once again, Defendants appear to be conflating

“recording” and “storage” functions without any support from the text of the Patents or other sources. As noted above, storing and recording are not used interchangeably in the Patents. Therefore, the Court finds that “capturing” information or content is a better construction. With respect to the dispute concerning whether “to record” involves capturing “video information” or capturing “content,” the Court is persuaded that “video information” is overly narrow, insofar as some of the claims in the Patents involve recording both video *and* audio information. Specifically, claim 203 of the ‘010 Patent claims an apparatus “wherein the processing device receives audio information *recorded by . . .* an audio recording device” or another device. (‘010 Patent, 125:44–46 (emphasis added).) However, because “content” is imprecise, and there is no suggestion in the Patents that anything other than video or audio information is recorded, the Court construes the object being recorded as video *or audio* information.

Accordingly, the Court construes all forms of “to record” to mean “to capture ‘video information’ or ‘audio information’ on any medium for any period of time.”

Authorized: The term “authorized” is found in twenty of the claims asserted under the ‘010 Patent. As an illustrative example, the term is used in the context of a processing device or computer “determin[ing] whether a transmission of . . . video information to the communication device is *authorized*.” (*Id.*, 116:32–33 (emphasis added).) Plaintiff proposes that the Court construe “authorized” to mean “having been granted approval or permission,” while Defendants propose the construction “authenticated, verified, permitted, recognized, or allowed.” (Claim Chart at 22.) While each of the words proposed by the parties may be synonymous with “authorized” in *some* contexts, the Court finds that Defendants’

proposed construction is overbroad with respect to the context used in the Patents. Specifically, each use of the term “authorized” in the Patents involves some indicia that the person or transmission in question has permission and approval – *not* that the person or transmission is what it purports to be, such that “authenticated” would be appropriate. (*See, e.g.*, ‘010 Patent, 116:25–30 (claiming “[t]he apparatus of claim 67, wherein the processing device transmits a second signal to the communication device, wherein the second signal contains information regarding a detected occurrence warranting providing notice to at least one of an owner, a user, and an authorized operator, of the vehicle”); 128:11–13 (“[T]he processing device determines whether a transmission of the video information to the communication device is authorized”).) However, the Court finds that some of the additions proposed by Defendants to Plaintiff’s construction fit the meaning of “authorized” as it appears in the Patents – specifically, the Court finds “allowed” and “recognized” to be appropriate components of the construction. Moreover, because the Court finds Plaintiff’s use of the passive voice in its proposed construction of this term to be confusing, it modifies the construction to employ an active voice.

Accordingly, the Court construes “authorized” to mean “approved, permitted, allowed, or recognized.”

Receives a signal transmitted from a communication device: This term is found in many of the claims asserted against all Defendants. Plaintiff, ATS, and Yonkers propose that the Court construe the term to mean “receives a ‘signal’ transmitted from a ‘communication device,’” with the words in quotes incorporating the constructions previously found by the Court. In contrast, the Manwin Defendants propose that the phrase be construed to mean “directly accepts a signal transmitted from a

communication device.” (Claim Chart at 23.) The Court finds that there is no support for any requirement that the signal be received “directly.”

Thus, the Court construes the term “receives a signal transmitted from a communication device” to mean “‘receives a ‘signal’ transmitted from a ‘communication device,’” incorporating by reference the constructions of other terms construed herein.

Monitoring: “Monitoring” is one of the more hotly contested terms presented to the Court for claim construction, especially between Plaintiff and the Manwin Defendants. It is found in many of the claims asserted under both Patents, but appears only in the preamble in each.

As a threshold matter, Plaintiff argues – for the first time in its reply brief – that “monitoring” is “not a term that should even be subject to construction” because it appears only in claim preambles and imposes no limitation. (Pl. Reply at 4; *see also, e.g.*, ‘010 Patent, 109:2–4.) The Court disagrees. “A preamble is generally construed to be limiting if it ‘recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim.’” *Proveris Scientific Corp. v. Innovasystems, Inc.*, 739 F.3d 1367, 1372 (Fed. Cir. 2014) (quoting *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1305 (Fed. Cir. 2005)); *see also Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1346 (Fed. Cir. 2002) (“[T]he preamble may be limiting when the claim drafter chooses to use both the preamble and the body to define the subject matter of the claimed invention.” (citation and internal quotation marks omitted)). Whether a preamble is limiting “is determined on the facts of each case in view of the claimed invention as a whole.” *Allen Eng’g Corp.*, 299 F.3d at 1346 (citation and internal quotation marks omitted); *see also Applied Materials, Inc. v.*

Advanced Semiconductor Materials Am., Inc., 98 F.3d 1563, 1572–73 (Fed. Cir. 1996) (“Whether a preamble stating the purpose and context of the invention constitutes a limitation . . . is determined on the facts of each case in light of the overall form of the claim, and the invention as described in the specification and illuminated in the prosecution history.”). Here, there is little doubt that the preambles – indicating that the Patents claim, for example, a “monitoring apparatus” – “serve[] to define the invention that is claimed,” *Applied Materials*, 98 F.3d at 1573, and give “life, meaning, and vitality” to the claims, *Proveris Scientific*, 739 F.3d at 1372. Specifically, the entire invention claimed by the Patents is driven by their monitoring function, and almost every claim involves a “monitoring apparatus” or “monitoring method.” Additionally, the “field” of the Patents is described as “a control, monitoring and/or security, apparatus and method for exercising and/or providing control, monitoring and/or security, for vehicles, motor vehicles, [etc.], in a network environment.” (‘010 Patent, 1:25–32.) Moreover, the shared specification repeatedly and continuously references the function of monitoring in describing the context and purpose of the invention. In fact, the very title of each of the Patents refers to the “Monitoring Apparatus and Method.” In sum, the Court finds that the preambles at issue give life to the claims, and, accordingly, are limiting. Thus, the Court will proceed to construe the claim term “monitoring.”

Plaintiff proposes that the Court construe the term to have its ordinary meaning, or, alternatively, that it be construed to mean:

[W]atching, listening, observing, keeping track of, checking, or verifying, a device, system, or activity, or an operation, status, or state, of a device, a system, or an

activity, or watching, listening, observing, keeping track of, checking, or verifying, an activity, or a state of an act or instance, process, or manner of functioning.

(Claim Chart at 24–25.) In contrast, ATS and Yonkers propose that the term be construed to mean “exercising or providing control over or security of vehicles or ‘premises,’” while the Manwin Defendants propose that it be defined as “an apparatus or method for exercising or providing control or security over vehicles or premises.” (*Id.* at 24.) Additionally, in their claim construction brief, the Manwin Defendants propose that the Court simply “define ‘monitoring’ to mean something more than just watching video transmitted over the Internet.” (Manwin Br. at 10.)

The Court agrees with Defendants that Plaintiff’s proposed construction is overbroad in effectively considering “watching” to be synonymous with “monitoring.” While the word “watching” does find its way into common definitions of the word “monitoring,” as Plaintiff itself acknowledges, the act of “watching” in such instances must be “*for a special purpose.*” (See Pl. Br. at 44 (citing *Merriam-Webster’s Desk Dictionary* 353 (1995), attached as Ex. E to Pl. Br.) (emphasis added).) Indeed, “monitoring” does *not*, as Plaintiff asserts, imply a strictly passive activity, but rather implies at least some active character of purpose-driven observation. Dictionaries from around the effective date of the Patents define the verb “monitor” to mean “to observe, record, or detect (an operation or condition) with instruments that have no effect upon the operation or condition,” “to oversee, supervise, or regulate,” or “to watch closely for purposes of control, surveillance, etc.” (See Bach Decl., Ex.10, *Random House Webster’s College Dictionary* 847 (1997); see also Bach Decl.,

Ex. 12, *Webster’s II New College Dictionary* 708 (1995) (defining “monitor” as “to check systematically or scrutinize for the purpose of collecting specified categories of data” or “to watch over”).) Nothing in the Patents suggests that the term “monitoring” was intended to be used in a purely passive manner such that “watching” or “listening” alone is enough. Thus, the Court concludes that “monitoring” is narrower than Plaintiff’s proposed construction.

On the other hand, the Court finds Defendants’ proposals to be *overly* narrow. To be sure, the Patents do reference a “monitoring” function in the same context as exercising control and maintaining security over a premises or vehicle. (See, e.g., ‘010 Patent, 13:24–31 (“When used in conjunction with a residential premises, residential building and/or home or household system, the apparatus and method . . . provide[s] control, monitoring and/or security functions for and over a home and/or residential premises.”).) However, nothing in the Patents inherently requires that the “monitoring” function be *limited* to security or control. Indeed, Defendants’ assertion that “monitoring” necessarily implies security or control appears to equate the various functions referenced in tandem in the Patents when, instead, they are used in the disjunctive.

Accordingly, the Court construes “monitoring” to mean “watching, listening, or observing, for the purpose of control, security, oversight, or supervision.”

Real-time video information: The term “real-time video information” appears in one claim – number 33 of the ‘046 Patent – that is asserted against only the Manwin Defendants. (See Claim Chart at 54–55.) Plaintiff proposes that the term be construed to mean “‘video information’ that is streamed at a normal playback rate. The source of the ‘video information’ can be live or recorded.” (*Id.* at 54.) By contrast, the

Manwin Defendants propose that the Court construe the term to mean “‘video information’ that is broadcast or transmitted live.” (*Id.*)

The Court finds that the ‘046 Patent consistently uses the term “real-time video information” to mean the *opposite* of “deferred” video information where a video camera with a storage medium attached can either (1) transmit video *simultaneously* with recording it, or (2) store the video for *deferred* transmission. (*See, e.g.*, ‘046 Patent, 27:59–65 (“The video recording device(s) or camera(s) may also be equipped with a storage medium, for storing the recorded video and/or picture(s), and a transmitter or transceiver for transmitting the stored video and/or picture(s) to the user or operator at a later time. In this manner, *real-time, as well as deferred, video and/or picture(s) transmissions* may be provided.” (emphasis added)).) Accordingly, the Court finds that the Manwin Defendants’ proposed construction is the correct one. However, because the Court ultimately finds that “live video information” is synonymous with “real-time video information” in the ‘046 Patent, in the interest of avoiding the use of “live” in the construction of the latter term, the Court modifies that construction to remove the word “live” in the manner proposed by Plaintiff with respect to “live video information.”

Accordingly, the Court construes “real-time video information” to mean “‘video information’ that is broadcast or transmitted as the information event occurs.”

Live video information: The term “live video information” also appears only in claim number 33 of the ‘046 Patent. Plaintiff proposes that the Court construe the term to mean “‘video information’ that is streamed as the video information event occurs.” (Claim Chart at 55–56.) Thus, Plaintiff proposes that the Court construe this term in the same manner that the Court

construed “real-time video information” – though, of course, Plaintiff advocated for a different construction with respect to the latter term in its briefing. In contrast, the Manwin Defendants propose that the Court construe the term to mean “‘video information’ that is produced live.” (*Id.* at 55.)

Although constructions that render certain terms mere surplusage are disfavored and judges are directed to give meaning to each term where possible, the Court finds that “live video information” is synonymous with “real-time video information” in the ‘046 Patent. *See Pickholtz v. Rainbow Technologies, Inc.*, 284 F.3d 1365, 1373 (Fed. Cir. 2002) (“Although we would typically be inclined to give meaning to the word ‘system,’ rather than regard it as surplusage, the patent in this case provides no indication that the two terms mean different things.” (citation omitted)); *see also In re Vaidyanathan*, 381 F. App’x 985, 996 (Fed. Cir. 2010) (“The ‘203 specification uses the word ‘strike’ synonymously with ‘intercept,’ foreclosing the divergent meanings the Board seeks to attach to these terms.”). Of course, the ‘046 Patent appears, at times, to refer to the two concepts as fundamentally different. (*See* ‘046 Patent, 74:10–12 (“The video recording device(s) or camera(s) may record and/or transmit the recorded video and/or the picture(s) in real time and/or live.”).) However, looking to the plain meaning of the term “live video information” as it would be understood by a person skilled in the art at the time of the invention in the context of the ‘046 Patent, the Court sees no alternative to a construction that would render “live” and “real-time” video synonymous. Certainly, the concept of “produced live,” put forth by the Manwin Defendants, finds no support from the ‘046 Patent or otherwise, and the Court has found no reasonable definition of “live” video to reconcile the claim terms as anything other than synonyms. Indeed, dictionaries define

“live” with respect to video to mean “at the moment of its happening or being performed; not on tape or by prerecording.” Dictionary.com Unabridged, “Live,” available at <http://dictionary.reference.com/browse/live> (last visited July 28, 2015).

Finally, the Court finds that Plaintiff’s use of the word “streamed” is unsupported in the ‘046 Patent. In fact, the ‘046 Patent nowhere references any action relating to “live video information” other than the transmission and broadcasting of such information.

Thus, the Court construes “live video information” as synonymous with “real-time video information,” with both meaning “‘video information’ that is broadcast or transmitted as the video information event occurs.”

Video conferencing: This term is found in claim 44 of the ‘046 Patent, which is asserted against the Manwin Defendants only. Plaintiff proposes that it be construed to mean “distributing or providing video information to one or more participants in an interactive (two-way) setting” (Pl. Br. at 45), while the Manwin Defendants propose that the term be construed as “sharing video information among a plurality of participants either in a broadcast (one-way) or interactive (two-way) setting” (Claim Chart at 57). Plainly, the word “conference” implies the ability to communicate each way in an interactive setting, such that a one-way broadcast is not a video conference. For example, dictionary definitions of the word “conference” include “a meeting for consultation, discussion, or an interchange of opinions,” “the act of consulting together,” and “an interchange of views.” *Webster’s Third New International Dictionary of the English Language* 75 (2002). In none of these definitions is there any possibility of a discussion in which only


one side is physically or technologically able to communicate with the other.

Accordingly, the Court construes “video conferencing” to mean “distributing or providing video information to one or more participants in an interactive (two-way) setting.”

III. CONCLUSION

Having completed claim construction, IT IS HEREBY ORDERED THAT the parties shall appear on September 3, 2015 at 2:00 p.m. for a conference regarding (1) ATS and Yonkers’ contemplated motion for judgment on the pleadings pursuant to Rule 12(c) (*see* No. 12-cv-7734 (RJS), Doc. No. 187), (2) setting a schedule for the remainder of discovery and for summary judgment briefing, and (3) the possibility of resolving this case through settlement.

SO ORDERED.


RICHARD J. SULLIVAN
United States District Judge

Dated: August 6, 2015
New York, New York

* * *

Plaintiff is represented by Maureen V. Abbey, Steven W. Ritcheson, Dara T. Jeffries, and Rene A Vazquez of Heninger Garrison Davis, LLC, and George Nicholas Proios of the Law Offices of George N. Proios, PLLC.

Defendants ATS and Yonkers are represented by Brian C. Park and Nathan C. Brunette of Stoel Rives LLP, Alexandra Capachietti of Burns & Levinson LLP, and Joseph V. DeMarco of DeVore & DeMarco, L.L.P.

The Manwin Defendants are represented by Arthur Gollwitzer III and Rachel N. Bach of Michael Best & Friedrich LLP, and Karin G. Pagnanelli and Bradley J. Mullins of Mitchell Silberberg & Knupp LLP.

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>4-6-15</u>
--