IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

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XEROX CORPORATION, : CIVIL ACTION
:
Plaintiff, :
:
v. :
:
GOOGLE, INC., YAHOO! INC., RIGHT :
MEDIA INC., RIGHT MEDIA LLC, :
YOUTUBE, INC., YOUTUBE, LLC, :
: NO. 10-136 (LPS)
Defendants.

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Wilmington, Delaware
Thursday, May 19, 2011
CLAIM CONSTRUCTION HEARING

- - -

BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J.

APPEARANCES:

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and

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P R O C E E D I N G S

(REPORTER'S NOTE: Claim construction hearing took place in open court, starting at 8:38 a.m.)

THE COURT: Good morning, everybody.

(The attorneys respond "Good morning, your Honor.")

THE COURT: If you would all put your appearances on the record, please.

MR. DAY: Good morning, your Honor. John Day from Ashby & Geddes as Delaware counsel for plaintiff Xerox

Corporation. With me this morning, your Honor, Xerox's lead counsel, Richard Stark.

MR. STARK: Good morning, your Honor.

MR. DAY: Scott Leslie and Andrei Harasymiak from Cravath Swain & Moore in New York. And also with us this morning, Sharon Goswami who is a summer associate from Cravath.

THE COURT: Welcome to all of you.

MR. DAY: Thank you.

MS. NOREIKA: Good morning.

THE COURT: Good morning.

MS. NOREIKA: Maryellen Noreika from Morris Nichols for the Yahoo! and Right Media defendants. With me are Anthony Fenwick and David Lisson from Davis Polk.

THE COURT: Welcome.

MR. HORWITZ: Good morning, your Honor.

THE COURT: Good morning.

MR. HORWITZ: Rich Horwitz from Potter Anderson & Corroon for Google. With me at counsel table, David Perlson from Quinn Emanuel. Also from Quinn Emanuel, Josh Sohn. And then from Google, John LaBarre and Doug Hudson.

THE COURT: Welcome to all of you as well.

So we are here this morning, as everybody knows, principally on claim construction, but there is a couple of discovery issues that you all raised in your letters. As

you all seem to have figured out, I'd like to start with claim construction. Have you talked about how you might like to proceed in that regard?

MR. STARK: Yes, your Honor. We did talk about it.

Our proposal was to have the plaintiff go first on all the claim construction issues, then defendants' side; and if okay with your Honor, I'd like to reserve some piece for rebuttal.

THE COURT: And that is defendants' request as well?

MR. PERLSON: That is fine with us, your Honor.

THE COURT: Defendants, do you intend to present separately or just one of you?

MR. PERLSON: I'll be doing most of the argument, and Mr. Fenwick may do some clean-up.

MR. FENWICK: If I may reserve five minutes, your Honor, which I may not use.

THE COURT: That's fine.

So we'll hear first from plaintiffs, then defendants; and then if you have time, you can each rebut one another for a few minutes on claim construction. Then assuming we have any of your hour and-a-half each left, we'll talk a little bit about discovery.

Mr. Stark, it appears you are up first.

MR. STARK: Thank you very much, your Honor.

Your Honor, just to summarize the issues that we are going to touch on briefly, one of the very big picture issue here has to do with whether the scope of a search generated by the claimed invention will be restricted or broadened. There has been a lot of discussion about that, particularly in defendants' pictures.

I'd like to clear that at the outset and suggest there is no dispute there. There is no question the claim says the search has to be restricted. We haven't argued to the contrary in our papers. I think maybe the parties have been missing each other. But we're not arguing the purpose of the claim is to broaden the scope of a search. That's just not what it's about.

THE COURT: So if your proposed construction on any term could be read as leading to a broadening, then I should not go with what you propose; correct?

MR. STARK: I would agree with that. That's not our intent to come up with something that broadens the scope of search. It's supposed to be something that is restricted.

Now, what are the serious issues here?

First of all, in my view, is the issue of whether the claims are invalid for indefiniteness. It seems to me that is something that ought to be cleared up right up

front. Clearly, we submit the claims are not invalid for indefiniteness. I think that is a logical place to start on this question relating to validity and starts right at the beginning of the claim, which is the term "selected document content." So that would be the first issue that I would like to address, your Honor.

Then second, what I think is almost the biggest substantive issue between the parties is whether the claim is talking about having just a single classification label and, therefore, a single category of information to be within the scope of a search or whether it can be more than one classification, more than one category.

I think it is really not fairly disputable when we look at the intrinsic evidence that it can be more than one of each, more than one label and more than one category that could be included in the scope of the search. I will take your Honor through that very carefully.

That is going to take us through, as we go, both the categorizing step and the formulating step in the claim. Largely, I'm going to be referring to claim 1 throughout this as we go through this because that is the overarching claim.

Then we come to the end of this to the issue of the label. What kind of format does the label have to have? That seems to be in dispute between the parties. I would

submit it shouldn't be because the claim doesn't call for any format. It could be any format at all.

Then, lastly, the order of steps. We had a bit of back and forth on that, and I will touch on that right at the end.

So, first, your Honor, I'd like to go right to the issue of indefiniteness and "selected document content."

THE COURT: Do you have copies of your presentation for us?

MR. STARK: Yes.

THE COURT: If you have two, that would be preferable.

MR. STARK: I'm so terribly sorry. We somehow managed to only get here with one.

THE COURT: You can submit a second one later.

MR. STARK: So we see, your Honor, the term "selected document content" obviously comes up throughout the claim, comes up right at the beginning where the claim is talking about generating a query from selected document content.

If we can go to the next slide.

The parties contentions are this way. We contend that "selected document content" just means "all or part of a document ..." Basically, the subject document that the claimed method, essentially a computer routine, is

going to work on. And it has to be in electronic form because we're talking about a computer invention here, clearly.

Defendants say, gosh, we don't know what "selected document content" means. It must be indefinite.

If we can flip over to the next slide.

The law says, your Honor, "A claim will be found indefinite only if it 'is insolubly ambiguous and no narrowing construction can be properly be adopted ...'" But it's really the insolubly ambiguous issue. It's a pretty high standard. What it is referring to is if a person skilled in the art, after reading the whole patent, couldn't understand what you are talking about with a particular term, then, and only then, could it be indefinite.

Here, the defendants raise only one argument really as to indefiniteness. That is, they say there is lack of so-called antecedent basis for the term "selected document content."

I suggest, your Honor, there is no such issue here at all. Lack of antecedent basis is patent law talk for when you have something that says "said lever" or something like that. Then "said lever" or "the lever" suggests there was a preceding or antecedent occurrence of that word in the claim, and you could have an issue, gee, if there wasn't one, if it was left out, then maybe I don't

know what "the lever" or "said lever" means later in the claim.

We don't have that here at all. It just says "selected document content" and not referring to anything back. So there is no antecedent basis. That is just a nonstarter argument.

I would also point out, just incidentally, that the cases that the defendants cite on this point don't advance the ball for them at all. The Halliburton case, the principal case they cite, simply says: amongst the list of ways a claim could possibly be indefinite is if there was a lack of antecedent basis. But that wasn't actually the issue in the Halliburton, and the case that Halliburton cited for that proposition, Energizer, found there was no indefiniteness even though there was a lack of antecedent basis. Judge Newman said, from the Federal Circuit, in that case, well, a person skilled in the art can still figure out what the claim was about.

So, legally, this is very, very weak argument, really, a nonstarter, because there is no antecedent basis issue here.

If we can go to the next slide.

As for what "selected document content" means, we would submit, your Honor, that it's really pretty clear from the text of the patent just what it is. It's really

talking about the input document that is going to be input to the entity extractor and the categorizer or the extraction of entity step and the automatically categorizing step in the claim.

That is really illustrated in Figure 38 where element 3612 in the upper left there is shown as being input to the entity extractor and also is input to the categorizer and that element 3612 is referred to in the accompanying text as document content.

So I would submit there is really not any ambiguity there as to what is at least document content when you are talking about what has been invented here.

As for the selected part, well, it's really just talking about, if you have one document in particular, a particular iteration of this process of the claimed method, you're operating on a piece of document text. So you are just identifying it by saying, well, here is a selected piece of text, a selected document content that is going to be an input to the process.

It's also described in the claim as well as in Figure 38 as the input to both the entity extractor, that says where the entities are going to be found, and the input to the categorizer, that is the text from which the categories are going to be determined. So that also makes the bounds of the claims well understandable to a person of

skill in the art; and that's the issue for indefiniteness.

I think, as this term was selected, it seems to me an analogy helps to understand and dispel any mystery defendants might have cast on this. The analogy that came to mind for me is when we go to a restaurant, we're presented with a menu. As a customer, our first task is to select something off the menu, select a food item that we want to order. The server comes along and takes your order, writes down the item you selected, takes that and gives it to the chef.

Now, if you look at it from the chef's perspective, the chef's job is to take orders that specify a selected menu item. He cooks them up and returns them back to the server to be delivered to the patrons. It doesn't matter to the chef who gave them the order and which person at the table, whatever table. Maybe even the server selected it at the customer's request. It doesn't matter who selected it. It doesn't matter who selected it. The chef's job is just to cook the selected item.

That is really what we're looking at in the claim here. The job, the routine described in the claim is to take a selected piece of document content that it is presented with, extract entities categorize it, formulate a query. There is really no mystery about that.

I would also like to just refer your Honor to

column 48 in the patent.

Let's see if I can test my technology skills here. (Using Elmo.)

Near -- actually, right at the top of the screen, it says, "in accordance with searches performed by services of the meta document server 200." It's talking about searches within the context of this overall document system described in the patent.

It says, "one or more documents relating to a task are identified and uploaded to the meta document server 200. From these documents, queries are generated for specified services automatically."

So this is actually, in terms of the embodiment, this is kind of a starter point. So some documents are uploaded to the meta document servers. There are some selected documents right there.

Then it goes on to say, "as set forth above, the document service request in a personality associated with an uploaded document identifies entities that are used to perform other document service requests such as queries."

So we're going to take an uploaded document, one of the ones that are uploaded, and extract entities from it.

Then it talks about the manner in which the entities are selected. Then it goes on to talk about extracting or determining categories from one of the

documents that was uploaded to the meta document server.

And there is also, just to kind of complete the picture, Figure 1. There are other figures as well, Figure 1 is just one of them. There is a discussion of what a meta document within the meta document server looks like. And one of the things it has in it is document content. There are other things that have been added to the content, markup and some information about the so-called personality, what services might be called to operate on the document. But there is content right there.

So I respectfully submit this, looking at column 48 and these couple of figures, shows quite clearly where a selected document comes from. It's selected meaning it's identified as one of the ones that has been uploaded to the system and the document content is just a content.

As we pointed out in our papers, "selected document content" is reference 38. The reference to Figure 38 which we saw showed the document content going to the categorizer and the extractor.

The text again in column 48 here says, down around line 52: "In operation, as shown in Figure 38, the document content 3612 or alternatively limited context (i.e., word, sentences or paragraphs) surrounding the entity is analyzed by the categorizer."

It says you could take the whole content, you

could take some limited context, either way.

THE COURT: So they, the defendants, fault you because they say your construction allows for even a single word to be a document. Address that criticism.

MR. STARK: Well, I think a single word in theory could be some selected document content wouldn't get you very meaningful results if you do that. I think there is nothing -- I think that says that couldn't be potentially some content.

THE COURT: And what is your construction and how should it be read in connection with a paper document that is later scanned and made into an electronic format? Do you mean to include that or not include that.

MR. STARK: I don't mean to include the paper document as such, your Honor. But if I took a paper document and scanned it into the machine, the electronic representation of it would become a document and potentially could be "selected document content" for purposes of this claim. I think the patent actually discusses that at one point.

Do you know which button I need to push to get back to the ... ah, thanks.

So that, your Honor, takes us through the issue of "selected document content." In summary, I think it's quite plain from the specification and, frankly, from the

claim itself what it is. It's input to the routine that is specified by the claim or the method specified by the claim.

There is really no ambiguity about it. Certainly, no lack of antecedent basics, which is the only 112 argument that the defendants actually raised.

If we can go on to the next slide then or slide 9, actually.

I'd like to move on then to the issue of "categorizing the selected document content..." This is really the first step in the whole issue about whether we're talking in this claim about one classification label or more than one and where they were talking about one category of information or more than one. This, as the defendants have rightly said, is the crux of the dispute between the parties.

In the defendants' construction here, they say "using the organized classification of document content to categorize the selected document content and to assign to the selected document content a single classification label."

Then they, of course, go on to say, "a single classification label corresponds to a single category of information that will be searched." They ultimately are driving at trying to say that the claim is confined to or the search that would result from a query is confined to searching

a single folder, if there were folders, corresponding to a single category corresponding to a single classification label.

This clearly cannot be the right construction simply as a matter of law, your Honor.

If we could go to -- it's page 11 in mine. It's the law point.

The Federal Circuit has been quite clear that in claim construction -- this might be a little counterintuitive, but in claim construction, the word "a" or the word "and" can mean "one or more;" and it's really not only can be, that generally is the meaning according to the cases, and the exceptions are extremely limited. There would have to be something clear in the claim or in the specification that advanced an intent to do something different, to make it just a single item.

If we go to the next slide.

The place to start, of course, is the claim language. And here, we boxed a couple of important instances. We've got, right up top, "a" classification label. It occurs in the defining organized classification of document content element.

Then "a" classification label comes up again in automatically categorizing the selected documents. So the categorizers are going to assign "a" classification label,

meaning "one or more," to the document.

There is also -- and this is a quite important point. There is also reference in the "defining organized classification of document content" step to "a category of information." Again, it must mean one or more under the case law; and defendants have said there is only the use of the phrase "the category of information" in the claim. There is never a preceding instance of "a category of information."

Now, that is just incorrect. It's right up there at the beginning part of the claim.

So if we continue to trace our way down, we find that in the automatically formulating step, things kind of come together to coalesce, as the patent says, a query.

Here, it says, "automatically formulating the query to restrict a search from the information retrieval system for information concerning the set of entities to the category of information ..." That refers back to, under the case law, it refers right back to a category of information. So one or more categories of information. "... in the information retrieval system identified by the assigned classification label." Again, one or more classification labels.

And this all snaps together and makes perfect sense. At the very bottom, referring to the assigned

classification label is plainly referring to what was assigned in the prior step of automatically categorizing, that would be one or more classification labels.

And, in turn, the first step in the claim defining the organized classification of document content set out that the organized classification has one or more labels that, in turn, correspond to with each one of those one or more labels corresponding to one or more categories of information.

So you have that structure set out at the beginning. The end references it again, just as here. We've got for each assigned classification label, we're going to have some categories of information.

So I think this really -- this combined with the claim -- with the case law, your Honor, I think really puts an end to any debate over whether it's one classification label or one category of information. It's plainly one or more.

And the defendants' principal argument as to why it only had to be only one? As I said, it says only "the" category of information at the very last step, and there wasn't a preceding "a" category of information, but that is just mistaken.

So that, as the Federal Circuit likes to say, claim interpretation begins and ends with the claim

language, and I think here we could end absolutely with the claim language. It's clear right there. It's "one or more."

We don't have to end there, though. There is a number of things we can look at in the specification. And I won't bother with the Elmo because we've cited these in the papers, but I counted up, there are seven instances in the specification where it says that more than one classification label can be assigned to a particular document.

In column 41, under the heading "Text Categorizer," for instance, it says "the goal of a text classification system such as a text categorizer 3610 is to classify a document 3612 into a set of one or more classes 3620, also referred to as categories. In operation, the text categorizer 3610 assigns a document one or more classes in a set of classes."

We couldn't get much clearer than that, but lest there were any doubt, in column 43, as we cited in our papers and looking at line 35, it says, "To simplify the description of text categorizer 3610, it is assumed that the documents 3612 will be assigned to no more than one class. However, it will be appreciated by those skilled in the art that the text categorization method described herein may be readily extended to assign documents to more than one class."

So what that is saying is to the extent any of

the preceding discussion of text categorizer assumed there was one class, we know it can be extended to more than one, and people skilled in the art would know that, too.

And it goes on immediately from there, still in column 43, to describe the problem formally in mathematical terms. And the problem can be represented, it says, as a text classification system S that assigns a document or body of text class labels -- drawn from a set of class labels. It goes again to talk about, plural, labels.

Column 48, at line 46, refers to constructing a query with a set of entities and a set of categories.

And below that, it says, "In operation, as shown in Figure 38, the document content 3612, alternatively limited context, surrounding the entity, is analyzed by the categorizer 3610 to produce a set of categories 3620." And there are some more references in 49.

At any rate, there are no fewer than seven instances that I counted. There might even be more than the specification referring to assigning multiple classification labels to a piece of document content.

THE COURT: Coming back to the claim language. In line 1 of claim 1, query is preceded by the word "a."

MR. STARK: Yes.

THE COURT: Does it mean one or more queries for purposes of the claim?

MR. STARK: I think it does, your Honor. It could be one or more queries, that is true. There is actually an example in the patent that shows that, too, which I will come to.

THE COURT: If it were more than one query, to make it queries, might that be what accounts for the multiplicity later in the language? That is, why should I not read it as when it's one query, it's one label, one category, and only when it's more than one query that it's more than one label and more than one category?

MR. STARK: Well, I think, just going from top to bottom -- I have two answers to this. Going top to bottom, one is the first time you come to "a classification label," the law would say we construe that as one or more. And that that is within the context, as I read it anyway, of how you would generate a query. Then it could be repeated to generate multiple queries, but each one would have potentially multiple classification labels and multiple categories.

I think that the second part of the answer is, of course, back to the specification where it says for each document, several times over, it says there can be multiple categories, multiple classification labels assigned.

So I think that is fairly non-controversial from reading the patent as a whole.

I think that really brings us to the end of the categorizing step. It seems fairly plain it has to be multiple categories or multiple class labels.

I think the next piece of this I'd like to talk about -- and this, Scott, is going to be on page 19 in mine -- is what is a "query."

The notion of how many labels, how many categories ties into what is a query and ties in also to the formulating a query step. And we see here right from the very first line of the claim that the claim is really about generating. "Automatically generating a query," it says. And then it has some set up and then ends up with "automatically formulating a query."

If we can go to the next page.

Xerox's construction says that the query is "a set of data specifying search criteria," whereas defendants say it's a "request for search results."

I think in some sense we're not that far apart here, but really our notion with our claim construction, your Honor, is to try to stay true to what the claim language is actually talking about, which is formulating a query if it tells you some of the things that can be placed in a query to specify it, to set its scope.

It doesn't actually say anything about getting results in the claim. Therefore, it is not accurate or fair

to start importing into the claim construction a notion of results.

Now, I wouldn't quibble with the notion that for most intents and purposes, the reason one would formulate a query would be to go off and do a search and have some results provided somewhere, but it doesn't necessarily follow. One could formulate a query and put them in a window and let someone click on them if they wanted to run them, for example. One could formulate queries, send them off to have a search done and have the results passed on to some other part of your system. Maybe they don't actually -- it's not a request for results in the sense that the results being returned to the entity or the person or routine that did the requesting.

So that is sort of where our difference lies there. It's just on this question of results and whether it is appropriate to focus on results as the defendants do.

THE COURT: Is there anything about your construction that precludes there being results?

MR. STARK: There could be results or not be results. In most cases, presumably there would be, but it's just not required by the claim.

We believe, your Honor, that our construction is quite consistent with the claim language and consistent with the specification as well. The claim, of course, as I

pointed out, talks about generating a query or formulating a query.

If we go to the specification -- turn to 22 now -- the specification tells us that the query generated -- this is in column 48. The query generated may include some or all of the following elements ...: (a) a set of entities, (b) a set of categories, and then (c) an aspect vector and (d) the category vocabulary. Of course, the claim references (a) and (b), entities and categories. I'm referring to claim 1, also to claim 18.

Some of the dependent claims talk about aspect vectors and category vocabulary. So those come up in dependent claims.

This column 48 I think best reflects embodiment of what is in the claims. It says, we're going to generate a query. It's going to have these kinds of things in it, (a) and (b). It may contain some more things because this is an open-ended claim, but according to the claim, it's going to have a set of entities and the one or more categories or classification labels.

The issue then that we have with the defendants' construction with its focus on search results is ultimately the claim construction is something that is going to inform jury instructions. It's going to give the jury a standard for what they have to find in order to find infringement or

to find anticipation, for that matter. It's really I think misleading to the jury to import this focus on the results into the claim because, as I said, it's not in the claim. The claim doesn't refer to results.

The defendants' primary evidence that they call upon to try to bring results into their construction are actually claims 11 and 17. Claims 11 and 17 do mention results, but those are dependent claims, they're not asserted by us in this case, so they're really quite irrelevant.

I just point out that 11 depends from 10, which depends from 1. Claim 17 depends from 16, which ultimately chains its way back up to 14, which is an independent claim which is also not asserted in this claim.

But claims 11 and 17 are the claims that refer to results. It is actually even worse for defendants' argument than merely being irrelevant. Under the Federal Circuit's claim construction law, when a dependent claim references some elements that are not in the independent claim, the inference is the independent claim is not meant to have those elements in it. It is unstated as to the independent claim as to whether the dependent claim elements are there. It might be there, it might not be there, but they're certainly not required if they're found only in dependent claims.

The results are found in dependent claims,

therefore, not required by claim 1 or claim 18 or frankly any of the other dependent claims that we have asserted that are not the ones that have results in them. Therefore, it would be quite misleading to the jury, we submit, your Honor, to import the idea of results into the notion of what a query is.

It might cause them to focus really on, when you are going to search, how do you perform the search, and what exactly do you get back, and so forth, all of which is really outside this claim. The claim talks about a set of query with a certain scope to it or some attributes to the query. Exactly how that query is responded to or implemented by some underlying system is beyond the scope of this claim. It could be a variety of ways of implementing a search.

That takes us then, your Honor, to the last step in the claim. This is the "automatically formulating a query" step in the claim.

Now, here, I think to a certain degree the parties have kind of been like ships passing in the night in a sense. We've addressed this step of the claim pretty much as a whole whereas the defendants have -- their proposal was "to restrict a search at the information retrieval system ..." and so on through the label and just look at that piece. It divorces the formulation of the query a little bit from, and takes it a little bit out of context, and not properly

so.

Our view of this, your Honor, is the claim language clearly says that the search scope is going to be restricted. It's to restrict a search. I don't think we have any dispute, any ambiguity that anyone has identified as to what "restrict" means. The defendants would like to substitute another word for "restrict," but they haven't said there is something ambiguous about "restrict." They haven't said there is a basis for using the word "confine," which is their proposed word for "restrict." That is sort of where they're coming from is simply to say, well, let's put in the word "confine," and it ties into their argument that says, well, there must be -- this all must be about doing a search that is ultimately, in its implementation, limited to one classification label, one corresponding category of information, and then they would go right down the implementation in the embodiment of the patent to say, well, that means you're confining the actual search in response to the "formulate a query" to one folder in a directory structure, I suppose, a file structure, and we're only going to look there, and then try to make that really the endpoint of where they're going with this. So we're going to confine the search to one folder.

Well, all they did with folders is merely an embodiment, merely an example here. None of that is

mentioned in the claim; and the Federal Circuit has told us many times that it's incorrect to use embodiments to restrict the scope of the claims.

As we discussed, the claim language doesn't support saying we only have one classification label or one category. So that is incorrect as well.

And "confine" is not -- I don't think it's appropriate to take a word like "restrict" as to which no one has identified any ambiguity and simply say, well, they like the word "confine" better so we're just going to switch it, put a different word in there.

I think it's all directed at coming up with a construction that will lead the jury in the direction that the defendants want to go, which is to say this all has to be limited to searching in a folder; but that is really not appropriate. It's not proper claim construction.

THE COURT: So, first of all, you don't agree that the claims are limited to searching in a single folder; correct?

MR. STARK: That is correct. We do not agree with that.

THE COURT: So help me understand what you do agree is restricted. As you say, there is a restriction, so what, in your view, is the restriction?

MR. STARK: The restriction, your Honor, is

that the query is formulated with both entities and with classification labels as a result of categorizing the document; and, as the claim says, that restricts the scope, restricts the search.

In operation, that could be implemented in a number of different ways. It could be implemented by searching in only some folders. It could be implemented by searching broadly but only returning elements that -- responsive documents that meet the criteria specified in the claim.

It would not be met by saying, well, that's fine if we have, you know, "seven-up" and "genetics" as our query. It wouldn't be met by saying well, we'll go search for anything that has "seven-up" in it and anything that has "genetics" in it and put all those things together. We're going to get "sodas," we're going to get "fruit-flies," all of that. That would be broadening. It's not talking about that. It's talking about using the classification labels to narrow, to restrict the scope of the search.

That is as much as the claim tells us, quite frankly. And, beyond that, how exactly the search is narrowed or restricted in response to the categories, the classification labels having been put in this query is left unstated as far as the plaintiff is concerned. That would be a particular implementation or embodiment issue.

THE COURT: You have mentioned several times the jury, where this may ultimately end up, and, of course, the Court would use its claim constructions to write the jury instructions. Your proposed language here, at least grammatically, seems a bit odd. It's hard for me to envision how I would use your construction to write jury instructions, at least if you intend what you propose to actually be a substitute for the yellow highlighted language there.

MR. STARK: Well, fair enough, your Honor. I think the defendants had pointed out here, we didn't have our verb in there in place of "restrict." I don't think, frankly, we need a verb in place of "restrict" because your Honor is free, of course, to, and I expect would, use the claim language as part of instructing the jury. The claim itself says, "automatically formulating the query to restrict," so I think "restrict" goes in the instructions to the jury no matter what. I think that "restrict" doesn't require any further interpretation. I think it's clear enough, and perfectly clear in fact.

Also, we noted in our papers that if your Honor felt there was some need to add something to what we had proposed in order to take care of that problem, there is an additional sentence we had put in our papers, something like "adding the classification labels restricts the scope of the

query" or some words to that effect. They were in our paper, in our response paper, and I think certainly that takes care of that issue.

To us, the word "restrict" didn't jump out as something that needed clarification. What the bulk of that, really the entire step is talking about is how do you formulate the query? What goes in it? So that is what we had addressed in our claim construction. But I think if your Honor felt something additional was needed, I think that is fairly straightforward to resolve.

In terms of this issue, does it really require searching a single folder? Is there anything in the specification about that? I refer your Honor to column 49. First of all, I would say the defendants relied very heavily on Figure 39. That's, of course, said in the specification to be only an example and an embodiment. The Federal Circuit tells us not to use examples or embodiments to restrict the scope of a claim.

The specification also says in reference to Figure 39, as we noted in our papers, that the point of what is going on is to focus the search. It doesn't say that the claim has to be restricted to or confined to just a single folder.

In column 49, there are also some alternate embodiments discussed; particularly at 49, lines 37 to 39.

The patent says, "in an alternate embodiment, the classification labels are appended to the terms in the aspect vector, to formulate a more precise query." The aspect vector having been mentioned as a piece of the query a few lines above that. And it says, "Adding terms to the aspect vector adds constraint to the query, limits the search to a set of nodes and/or subnodes in a document categorization structure.

So that is another take of another possible embodiment that wouldn't in any way be limited to a single folder.

And in column 51, there is a discussion of Figure 40.

We'll try the Elmo again.

Figure 40 is said to be an example, again, an example of the embodiment which would be non-limiting but it is illustrative.

Figure 40, if you follow the flow, it says you start at 4002, extracting entity from document content and added entity to query. Then categorize the content, generate the category vocabulary. Then locate node in category organization corresponding to document category.

Locate node searched with query if you haven't searched this node before. If not, it then goes search that node. Then the rest is check the results to see if you got

good enough results.

If the answer is you didn't get good enough results, you're going to go next to the query essentially and recheck the node and then, ultimately, it's going to go up to, work its way up the hierarchy of the classification.

So it will start at a leaf node. If you think of the classification or categorization as a tree, nodes at the very bottom are leaves, it's going to start with the leaf node and then it's going to go and work its way up to the parents of the leaves, and then the parents, and then the parents, until it gets potentially to the root node at the very top of the tree and make a search there.

So what this is showing is it iteratively, in this example, iteratively is going to show queries to search more and more broadly as it goes along but it's focused by starting with the leaf and then going to some subcategories that encompass the leaf and so on. So it works its way up to broader sets of information.

But that is plainly not searching just a single folder. That is searching iteratively in broader spans of folders.

So, your Honor, that I think brings us to the end of what is really the crux of the dispute here, which is this, it's all this stuff about our searching a single folder. Are we using a single classification label? A

single category?

Defendants are trying to drive all this in the direction of saying it's all a single category, a single classification label, a single folder. You have to confine your search to the single folder and only return what you find in the single folder, and that's what the claim is about.

That's just not what the claim is about, your Honor. It's about generating a query, formulating a query that has certain characteristics to it, and that will restrict the scope of the search, and exactly how that restriction is implemented is outside the framework of this claim.

THE COURT: Your proposed construction also uses the phrase "data items." I wasn't quite sure where that came from.

MR. STARK: "Data items" is a pretty conventional term in computer science and computer patents just to refer to some piece of data. An entity would be a data item. A classification label could be a data item. Any little piece of data could be a data item. We're not in any way wed to the term "data item." It's a pretty non-controversial term that occurs in dictionaries and lots of references.

With that, those crux issues covered, your

Honor, I'd like to turn just to the two remaining issues, the first of which has to do with the classification label.

I need to switch inputs. Thanks.

We can go right to the construction on slide 15.

So what this has kind of boiled down to is I believe just a dispute about what is the format of the label? The claim language, of course, doesn't say anything about format. It just says you have a classification label.

The defendants want to say it was classifying a word or phrase.

It doesn't say anything in the claim language that it has to be a word or a phrase. What the defendants cite to support this primarily is general dictionary definitions.

You can go to the next page.

There is little, if anything, to rely on other than extrinsic evidence. For example, these dictionary definitions where they're talking about a label in the sense of an epithet or a label in the sense of a piece of the dictionary definition or something to do with a newspaper headline is just not relevant to anything we're talking about in this patent.

The Federal Circuit 's guidance in Phillips, of course, downgrades very much on dictionaries. It's cautions about that. It's okay to refer to dictionaries but, in

particular, it cautions about referring to general dictionaries really for just this reason. There is a lot of definitions in general dictionaries often not relevant to the art and to the invention in the patent.

If we turn two pages on to the computer definitions.

The IBM Computer Dictionary of Computing defines a "label" as "an identifier within or attached to a set of data elements." It's just an identifier. It doesn't say what kind of format it has to have.

McGraw-Hill says "a data item ..." -- there is that term data item. It turns up in a number of places -- "... that serves to identify a data record ..."

Again, no suggestion of format.

I submit it is quite -- well, it's quite well known as a matter of just common sense that a label could be whatever is convenient, particularly whatever is convenient to the system you are working with.

We gave the example of the Library of Congress, Dewey Decimal System. Those are classifications that have a series of labels. The Library of Congress has a label, series of numbers, and you can go to the stacks. I'm not sure anyone goes to stacks anymore, but in my day you used to go to a stack and you would peruse the books, and you would look for the little label on the side that said K

something-something, and that would help you identify a book in the category of information that you were looking for.

That is just what is meant by a label. It could be a word. It could just be some alphanumeric identifiers.

In computer, it's for sure going to be bits at the end of the day. That is all anything that is in a computer is just bits. Even if it were characters that represent the label, those are represented by bits in the computer.

So we would submit, Your Honor, there isn't really, at all, any basis for putting any format restriction on what a classification label is.

The specification also doesn't say anything about format. It does say in the mathematical piece that I referenced earlier, in column 43, it refers to labels as values in a mathematical set. That is a pretty abstract concept. It really could be anything to fit that definition.

To be sure, in Figure 39, which defendants rely on very heavily, each of the nodes in the tree shown in that figure has words in it. But this is a conceptual diagram. This isn't saying this is literally what is going to be in the computer. The computer is not going to have a chart with lines or boxes. Nor is it necessarily going to have English letters in there. It's going to be bits and bites, data structures that represent this.

And as far as a computer or program is concerned, if I have a number that relates to genetics, for example, if I have a table that tells number 37 is genetics or is a pointer that points me off to where I have stored my information about genetics, that is perfectly sufficient in the context of a computer. Just the fact that a diagram has been made readable for humans by putting words on it doesn't mean that the labels have to be words.

THE COURT: The defendants seem to distinguish between a label and a mere identifier. Help me understand why that is not a problem for you.

MR. STARK: I'm not sure how they distinguish --

THE COURT: They make an argument that when it's numbers, perhaps you're just identifying a particular piece of data and somehow that is not a label.

MR. STARK: Oh, yes. This goes to their use of the term "classified." It has to be a classified word or phrase. And this, I should have mentioned this. I'm sorry, your Honor.

This is really off-base in terms of what the claim says. The classifying is done using the organized classification of document contents. You take a document and it's compared to by whatever means it's compared to, the organized classification, to figure out what class or classes it falls into.

The classification label is just, following the logic of the claim, it's just an identifier that is associated with the class.

If I had my fruit-fly document ends up in a class genetics, all I need is a label. All the computer needs is a label to say this is in this class, genetics, and then to make that class correspond to this category of information, and the information retrieval system. It's just kind of a go-between. It really is literally just like the idea of the Library of Congress call letters or something like that.

The label doesn't do any classifying. It's just to establish the correspondence between classifications and categories and to have something to put in the query. It can be whatever the search engine needs by way of a label to say, oh, I can make that correspondence, too. I know if you put 37 in for a classification, that is genetics, so focus on that.

That takes us, your Honor, lastly to the "order of steps."

Now, here, the constructions are a little wordy. Essentially, I think the starting point is the law which says in a method claim -- and that is what we have here -- the steps have to be written in the claim in some order, because that is just the way we write things on paper. But

that doesn't mean that the steps have to be performed in that order absent something in the logic of the claim or some clear guidance in the specification that says you have to perform things in some order.

The presumption is the steps are not ordered.

The defendants want to say that step (a), defining the organized classification, has to come before (c) and (d). And, actually, we agree with that because you have to have an organized classification of document content in place before you can ostensibly do the categorization or formulate a query.

Then they say step (b), extraction of entities, has to be performed to completion before you do step (d), which is to formulate a new query. And, likewise, Step C, the categorization, has to be performed to completion before you get to step (d), the formulation.

Now, both sides are really, largely in our papers, arguing based on what makes sense reading the claim. The defendants are simply asserting, well, it makes sense to complete all the collection of extraction entities and categories before you go on to formulate a query.

Our view is, in a strict logical sense, that is not required in order to be able to formulate a query; and the claim doesn't say that you have to have all the entities or all the categories before you start formulating a query.

There is nothing in the claim, for example, that prohibits, well, let's get a set of entities, let's do that iteratively, and as we get one, we will pass it on the formulator and it is put into the claim. That is for the query.

Similarly, with the categorization, that can be done iteratively, pass them on. As you get them, they are added to the query.

And there are three bits of specifications support for this as well.

If we go back, Scott, to one of the first slides we has was Figure 38. It was on page 5.

So Figure 38, your Honor, is described in the specification as illustrating the flow of information. Basically, the process for how a selected document content gets processed. So entities are extracted and categories are discerned from it.

What is interesting about this figure is there are two arrows coming out of the document content 3612, one to the entity extractor and one to the categorizer. What this really suggests is a parallel flow, suggests that these two things may be going on simultaneously.

If one were going to illustrate this goes step by step, one would have drawn a different diagram, it would have said, well, we'll have the box that says entity

extractor, and we'll have another box sequentially that says categorizer, and we'll have another box below that that says now do the formulating.

What is illustrated here is actually a parallel flow of information simultaneously from 3612 to the entity extractor and to the categorizer, and then the entity extractor sends an entity -- of course, we know it can be more than one entity. It shows here one going to the category generator, the category going to the category generator, and the query being formulated as a result of that. But that is one bit.

There is also, in column 48, it talks about, at the bottom of the column, about the formulation of the query. It says in one embodiment, the query generator 3810 -- and you see that on the screen here -- coalesces these four elements; i.e. entity 3808, category 3620, aspect vector 3822, and category vocabulary 3621; to automatically formulate a query.

Then it's an interesting choice of words there, "coalesce" which means to unite as a whole or to arise from a combination of distinct elements. It has that connotation to it. It invokes a sort of sense of simultaneity that several things are coming together at one time or over time to be joined into or united into a whole. It doesn't say it will first, get all the entities, then let's get all the

categories, then we will paste them all together into a query.

The last, perhaps most important, bit of the specification is column 75. Column 75 talks about the computer system in which the invention can be implemented, and, specifically, says that it can be a system with multiple processors. It can have indeed multiple computer systems all ganged together to work on the problem altogether.

I think it's fairly plain if you had multiple computer systems working on this, it would be pretty routine, pretty commonsensical to say, well, we could have one doing the extraction of entities, we could have another computer system doing the categorizing of the documents so we get the benefit of speed up by having parallel processing. And as those things are producing results, we'll pass them on to yet another computer system or processor to assemble or formulate the query.

That is absolutely a routine way to think about things in the computer world. We've got multiple processes, or multiple processors, or multiple computer systems. Let's have them each -- let's break up the problem and have them each do a piece of it and put them together. That is why one would talk about having multiple systems as it does here.

The last little piece of this is the question of whether the step of claim 2 has to be performed during or

after the completion of step 1 or does it have to be -- or is it the case, as the defendants say, that all of claim 1 has to be performed before you go to step 2.

And, again, the claim does not in any way say that you have to get to the end of the completion of step 1 and only then, once we have got fully formulated queries for claim 1, do we go and add the additional information from claim 2. You are adding terms from the context around the entities.

It doesn't say that anywhere in the claim here. In fact, if we go to the next slide, the specification says, it reads this way: "Document classification labels define the set of categories 3620 output by the categorizer 3610. These classification labels in one embodiment are appended to the query 3812 by query generator 3810 to restrict the scope of the query (i.e., the entity and the context vector 3822)."

So, here, "context vector" is the specification term for these added terms that are referenced in claim 2. So what this is saying we've got a query that has an entity or has these, and context vector, the information from dependent claim 2. Now we're going to add to that the classification labels from claim 1.

So the ordering that the defendants are trying to impose on claim 1 to claim 2 is clearly inconsistent with

the specification. I would submit that that just further shows that their overall attempts to impose ordering on the steps is not contemplated in the specification. It's contemplating coalescing, putting things together, possibly it has them in frankly whatever order makes sense for the implementation.

That, your Honor, is the last of the issues on claim construction.

I think just to review the principal issues, these last ones are not as important. The principal issues are the indefiniteness issue where the defendants have claimed that there is a lack of antecedent basis. That is clearly not the case, it is not a lack of antecedent basis case, and the specification clearly shows what the selected document content is. There is really no ambiguity there.

And then on the whole issue of does the search have to be limited to essentially all the way down to a single folder is not at all what the patent is talking about. It's talking about a query that may have one or more classification labels, or define one or more categories of information, and the scope of that query is restricted. How the implementation works from there, whether it's down to a folder or to multiple nodes or some other means of restricting the query, that is just beyond the framework of this claim.

Thank you very much, your Honor. I reserve whatever time I have left.

THE COURT: Okay. You may do so, and we'll hear from defendants.

MR. STARK: Thank you.

MR. HORWITZ: Your Honor?

THE COURT: You may.

(Binders passed forward.)

MR. PERLSON: Okay. Now, I have it figured out.

THE COURT: Okay.

MR. PERLSON: Your Honor, I think we'll be taking the terms at a slightly different order, as was the case in our brief. We will start off with the "restrict to search ... to the category ..." limitation, which I think we've stated for some time we think is the critical limitation in this case.

It's important that it's not just to restrict a search in any way, it's to restrict a search to the category.

There is really two disputes involved with this phrase. Several times throughout the presentation, plaintiff had tried to sort of put these together and suggest that our construction of this term and the assigned term, that the dispute is about one or more categories or, you know, whether one or more should be assigned or whether it should be restricted to one or more.

We do agree that the search needs to be restricted to a single category, that it supports that. But there is a separate issue here as to what it means to restrict the search to the category.

So we say, we provided language that it means that the search is confined to the category; and plaintiff has a construction that doesn't really account for restrict at all and kind of uses this "include" language.

Now, obviously the place to start here is the claims. We think that the claims are pretty clear. That the only reason we're here is obviously there is litigation and there is a dispute regarding this phrase, so we wanted to provide a construction that we thought would make sense and help the jury.

But if you go through the element at issue here, "automatically formulating a query," it's done "to restrict a search at the information retrieval system." So the purpose of formulating the query is to restrict a search at the information retrieval system.

Now, the element provides a couple things. It provides a "what," which is what are you searching for? Well, that is information concerning the entity.

It also provides a "where." It says where are we going to be searching at the information retrieval system? Well, we're going to be searching -- it's going to be

restricted to the category of information in the information retrieval system. So it has to be restricted to just that category of information.

The information retrieval system would have a large set, and it's organized by categories, and the search, you are going to search for the information concerning that set of entities in that category that is identified by the assigned classification level in the prior step.

Now, we provided definitions that support our "confined to" language. These are the few that we included in our opening brief.

Xerox cited some dictionary definitions, too. And we would submit, your Honor, that they support us as well. For example, Webster's Third International Dictionary.

This is on slide 7. It says "restrict: To set bounds or limits to: hold within bounds."

Then there is another one from the Cambridge Dictionaries Online that is consistent with our construction as well.

Now, Xerox's response here is saying that we're switching -- there is no reason to switch "restrict" with "confine." But Xerox, their definitions don't have "restrict" at all. In fact, I think that plaintiff even conceded that.

He said we took issue with the fact that they

didn't use the verb "restrict" or something like it. Well, we do take issue with that, and this language does need to be in the claim. And whether it's "restrict" or some other very similar term, it has to be -- the jury needs to know that this is a limitation, and it needs to be given effect. We would submit that the language that Xerox has chosen is specifically part of an attempt to eliminate any restriction whatsoever.

THE COURT: But their concession today is that at least the word "restrict" needs to remain in the claim. Is there any significance at this point whether it's "restrict" or "confine?"

MR. PERLSON: Well, I think so. Well, I'm not sure what that concession meant, frankly. Because, sure, the word is in the claim; right? The word is there. You are not going to give an instruction that is going to erase the limitation from memory, but you are going to provide the jury with a construction that says what this means, what this phrase means.

What Xerox is suggesting is that this limitation means what is on the right. "Restrict" is not in there. And that is how the jury is going to look at it. I mean that is what they're supposed to do. And so by eliminating -- by just saying, oh, we agree that it's "restrict a search," that is not really helpful to anybody. That is not

going to be helpful to the jury.

And I think an important point here -- let me just jump here a little bit -- is to address your point regarding this concession. And I think that one of the problems with it is that it allows for this:

They say that, sure, we have "to restrict a search." But then when you asked them what that meant, he kind of went on this long series of examples and none of those seemed -- you know, they didn't seem to be restricting a search to me. Instead, it seems to allow for this. This is kind of a representation.

In the patent, there is a query. And it's, you have the category of information identified by the assigned classification label. And we have here noted in yellow the categories that would be searched. The patent would talk about you would restrict the search to that area with the X.

Xerox's construction allows for the search to go way beyond that. You are searching the whole thing. And that seemed to be precisely what plaintiff was arguing in connection with their construction.

Now, I think it's important to go to the -- we think that the claim language itself is clear enough on its own and that you really could end the inquiry there, but we have a specification and Phillips says we should look at it to assist us in this process, and the specification fully

supports defendants' construction.

Here, we have Figure 39, and it explains that the search is focused on documents found in the single node of the document hierarchy genetics 3910. That's the genetics in the bottom right there. And the other nodes such as arts, TV, food science, those aren't searched. And you can see that by the query that is below.

The query shows that, there is a "cat=" and then what follows are the categories, science, biology, genetics.

One thing to be clear, your Honor, there are three classification labels there; science, biology, genetics; but that's just a path to the single node genetics. So it's not by setting up that query that you would be searching all of science. You are only searching a portion of science that is in the genetics node.

Now, Xerox says that we're trying to limit the claim to a single embodiment. And that is just not true. We're not trying to limit the claims to the spec or import a limitation from the specification. We think the plain language is consistent with our construction, and we're just pointing to the specification as reinforcement of that. There is nothing we need to import to get the restrict to the category limitation in the claims. It's already there. And it's not just a single embodiment.

Figure 40, which plaintiff went over in its

presentation talks about it, and this restriction. If you see, it refers to the fact that, at 4007, you have a particular category that is identified in the organizational structure. And then, if that node hasn't been searched, then that query as it is defined is directed to the located node in the category organization.

Here we go again. We're going right to the node. The category is restricted to that node, that is what we're talking about here, and it matches up with the limitation at issue here.

Now, plaintiff went through this slide as somehow supporting that this limitation allows for multiple categories or that it's not restricted in some way to categories. And I think that the presentation wasn't completely accurate to what is really going on.

These other steps on the other side of Figure 40, they correspond to the dependent claims. And if you note, it says, after you -- you see, you direct the query to locate a node, and then you obtain results. But if you don't retain -- you see where you retain results. And if you don't, then there is a loop and it goes back, and then you might go up the node and run the search again.

But if do you get results and they're not accurate, then you go on to look at this aspect vector. That's what claim 2 is talking about here.

And then it talks about how you would build this. And then when you have this automatic query, you run it again.

Then there is also another path where you might use a category vocabulary.

Every single one of these come back to this same scheme in Figure 40 where you have directed a query to the located node. Every single time. So even after you -- even when you are doing these dependent claims, after you have done a claim 1 and it didn't work, you are still going back to that node.

The specification explains that this whole ontology is set up so you can do this type of directed search that is confined to a category.

This is on slide 17, referring to column 40:65 to 41:4.

It says that this ontology permits the specification of document service requests to take place at different levels of the entity-type hierarchy. So it's in these little nodes here. That's the whole point. That's the reason why you are defining the ontology in the first place, which is the first element of the claim.

The specification also gives an example of how search engines, like at Google, you would limit your search to a single category. This is on slide 18.

It says that "the searches performed by services will be limited to specified categories. That is, searches performed by a selected service can be limited to a specified category in the information provider's directory (e.g., Google)." And it gives an example of how your search would be limited to people, the people category.

That is what the patent is talking about as far as restricting the search to the category. You are doing the search, and you are confining it to that category.

We went and looked on the Way-Back Machine, which allows you to see what web pages used to look like, and Google's description of their category search at the time is right in line with what the spec said.

It says that, "Google's directory engine also lets you search within a category ..." and it gives an example. If you wanted to search for Cougars, and you wanted to only search for a college basketball team Cougars rather than across the entire web, and in doing this, it specifically points out the difference between a category search and a web search.

When you search in the Google directory, only the category you are currently in will be searched. That is different a from a web search, a normal keyword search, where if you put in Cougars and basketball, it would search the whole thing. This is related to that chart that I

showed earlier.

But, you know, still more. Prosecution history. There, the claims are rejected over the Rennison reference, and Xerox says Rennison expands the terms of the query, but our patent, we formulated query to restrict a search.

They didn't say this once. Here is two more -- and that is slide 21 -- that we include in our brief where they say it. They can't come in here now after representing to the Patent Office that this restriction is what distinguishes it from the prior art and seek the broader construction. Yet, that is precisely what they are doing.

Now, they try to get around this, what they said in the prosecution history by representing to the Court that during prosecution, they did not stress the "restrict" element.

That is not a credible statement, your Honor. In the brief, they call it out in one of the headings, and they italicize it six times in that brief. Clearly, this is something that they placed a lot of emphasis on it.

Now, they say in their brief, they mention it today -- in fact, I'm not sure that we saw this at all today. But they say that the examiner didn't rely on it so it doesn't matter.

Well, first of all, we didn't know whether the examiner relied on it or not, but even if he didn't, that is not relevant as a matter of law as the Laitram case says

here on slide 23.

So here, additionally, the inventors. We took the inventors' depositions, and we asked them.

We said: What does it mean with when you have the search like in 39 where you have this category?

He said: Well, at Google, it would access the documents that are in the class top/science/biology/genetics.

We asked him: How is this different from a normal keyword search? What if we just, in Google, did seven-up and science and biology and human genomics?

And he said: Well, that would just be the normal again keyword interface to Google.

And, again, that is something different. That is a totally different functionality, and that is not what the patent talks about.

Inventor Shanahan. He said, too, that the search would not be restricted to a category if even a single retrieved result fell outside that category.

Now, plaintiff has pointed to the Howmedica case that the intent of the inventor is not relevant, but even that case says that inventor testimony is relevant to how particular terms would be understood in the art. That is precisely how we're using it. In fact, Xerox, elsewhere in its own brief, relies on it.

Now, here we have Xerox's construction on slide

28, and "restriction" isn't there at all. Actually, at this point, that doesn't seem to be in dispute, and it just talks about what the query might include.

But this really goes to only the "what." It says nothing about the "where." Restricting the search, what does that do? Basically, it's irrelevant in their construction.

We already talked about this.

And this sort of goes to their point about how, in the briefs, that the claims only specified what the query contains, not how it interacts with the information retrieval system, but that is not what this patent is about.

The point of formulating the query is to restrict a search at the information retrieval system to the category. I mean that is what the claim language says, and, in fact, during prosecution, this is on claim 30, and we cite several places where they said this.

They said that, "In formulating the query, the query generator restricts the search at the information retrieval system to the category of information in the information retrieval system identified by the assigned classification label."

So they're saying, by doing this, by formulating the query this way, the search is going to be restricted. So it is absolutely part of the claim and the intention of

the claim to have an effect on what is going to be done at the search engine.

Now, they say we pointed out a "straw-man" and that they didn't intend to include a search where you would have an either/or. But whether they argued for that or not, it does. It absolutely allows for an either/or query.

Here is a query: Seven-up or genetics or beverages. It includes entities. The entity there is seven-up. And it included classification labels, genetics or beverages.

That fits within plaintiff's construction. Whether they argued that it should or shouldn't, it plainly does.

And, really, this is in our brief as well. They basically sort of rewritten the claim to say automatically formulating the query to concern the set of entities and the classification label.

But, again, this just addresses the "what." The search in the claims is not just a search for information concerning the set of entities and the category. It's a search concerning the entities that is restricted to the category. That is really critical.

It was mentioned in a footnote and briefly mentioned today that they might be able to plop on a couple extra words to their construction and fix the problem.

And I think today, plaintiff mentioned that their claim mentioned something about the query scope is restricted by the classification labels. Actually, what they suggested is that it is narrowed by it.

But here, if you look, they're still not talking about the search being restricted. They're talking about the query being restricted. It's the same problem. That they want to talk about the "what" and not the "where." They don't want to focus on what is going on at the search engine.

Now, this is a straight issue in relation to the construction is whether the search is restricted to the category of information in the information retrieval system, meaning a single category, or whether the search criteria includes one or more classification labels assigned in the automatically categorizing step.

Now, in their briefs, they didn't mention anything about the claims. They provided no basis for why the category of information meant "one or more."

Here, and then elsewhere, they had talked about that "a" means "one or more" in relation to the assigning step, but they never discussed it here, and we pointed that out to them. So, today, we had a slide that purports to provide an antecedent to "a," and there is a sleight of hand going on here. I will put on, in the Elmo, what plaintiff

did here and we can walk through it.

So what plaintiff seems to be arguing now, even though the parties -- by the way, the parties, in the joint claim construction statement, have agreement on various antecedent terms. And you will notice that this new explanation that the category of information here is a category of information 1(a) is not there. We have never seen it before today. In fact, it just completely misrepresents what is going on in context of the claim.

The first element is talking about how "a" defined -- how you define the organization document contents. And you do that with, you have the organized classification of document content that has -- there is a classification label and each classification label has with it a category of information, and so there is a one-to-one correlation with those. That is kind of talking about it in the back row. That is not talking about any specific category or anything done in relation to any query. That is just generally.

Then, when you get to the automatically categorizing step, a classification label is assigned. And there is no dispute that that is the same classification label as the assigned classification label. But now, because we have pointed out that there is no antecedent basis for the category of information or there is no "a" preceding it, meaning that the default rule of "a" means

"one or more" doesn't apply, they looked back and now they're trying to say that each classification label corresponding to "a" category of information is somehow the antecedent basis to "the" category of information in the last step.

Well, again, first of all, at a very high level that doesn't make sense, because the first element is just about defining this organization. It's not about this very specific generation of the query.

But, further, it wouldn't even make sense that it would refer back to the one above because the one above has to have -- there has to be a one-to-one correlation between in the organization classification. In the organized classification of document content, there has to be a one-to-one correlation between the classification label and the category. If there wasn't, then the last step wouldn't work because it talks about formulating the query to restrict a search at the information retrieval system to the category of information in the information retrieval system identified by the assigned classification label.

Well, in order for you to know what the category of information would be, that would apply to the assigned classification label, there has to be a one-to-one correlation in the first element. So they're kind of comparing apples and oranges here to create an argument.

Now, the next dispute is on the "categorizing" phrase. Again, your Honor, I think that plaintiff had pulled an excerpt from our brief and had suggested that this issue regarding the single classification label is like the crux of our argument.

That is just not true. As I mentioned before, there are multiple disputes here, and this dispute is not wrapped up in the "restricting." Obviously, we think that our construction is correct here, but if you don't go our way on this one, it doesn't mean that you don't have to go our way on the other one.

And I think it's also point to note that the dispute here is not whether multiple classification labels can be used in the categorization step. We acknowledged multiple classification labels can be used. But the point is that when you actually -- the step is going to end in having this one classification label.

Here, the context of the claims is very important. And you have the Kyocera case that we cited. Claim 41 directs that it's important to look at how these terms are used in context.

Here, there is not really any dispute that the categorization step has a relation to the formulating step because there is no dispute that the assigned classification label in the last step is the label that is assigned in the

categorizing step.

And this is sort of relating to the point that I mentioned earlier. That you have to have the single classification label assigned at the end of the prior step. Otherwise, you wouldn't know what category of information to use in the last step. If there are multiple categories identified, if there are multiple assigned categories, you wouldn't know what the category of information in the information retrieval system you are supposed to go to.

Again, there is no dispute that the assigned classification label in the automatically formulating step is the label that is assigned in the prior step.

And we have already talked about the one-to-one correlation and this whole congruence of there being a one-to-one, in the beginning, correlation when you define it, and then a single classification label assigned, and then that single classification label is used to identify the category of information. All of this really only makes sense if it's a single label.

Now, Xerox points to the default rule and they say that "a" means "one or more." It is a default rule, but Baldwin says that where the language of the claims themselves, the specification, the prosecution history, necessitate a departure from it, then you do that. And we would submit what I just described above is that is exactly

the situation here.

Now, this is kind of hard to read, but this is from their footnote kind of explaining the reasoning of this "one or more" rule, and it talks about in the middle how you want to avoid a situation if there is an open-ended claim that requires a widget, that if there is two widgets, that shouldn't get you out of infringement.

But here we're talking about restricting the category and assigning. You are assigning a category and then later using that assigned category to restrict a search to that category. So this is a completely different issue of then what is going on here, that someone might just add in a widget or two to avoid infringement.

Now, it's true that a document could be assigned multiple labels as a technical matter, but that is not what the patent is talking about. The patent is talking about a way to improve precision recall and allowing a construction that is unbounded with how many categories could be assigned and then later searched would be totally contrary to that; and, in fact, it would allow here what is on slide 48. That here you have a situation where you have assigned all, documented all the labels, and you looked in all the categories. And we would submit, your Honor, that that is not precision recall and that the construction that Xerox allowed is totally contrary to the purpose of the invention.

Xerox is correct -- and this is what we acknowledged earlier -- that in the categorization process, multiple categories may be used. But as shown in Figure 49, you only actually get to one assigned label. The explanation of Figure 39 is consistent with that. It says that you have the categorizer identifies classification labels; science, biology, genetics. And then it, talks underneath there, you might go determine what the best one is, and then when you do that, you found that it's this path, that genetics is the best. And so then you focus the search on the documents found in the single node of document hierarchy genetics, 3910.

And Xerox's construction also eliminates really the notion of determining. If you look, it sort of takes out the idea that you are categorizing here. There is really no justification for that leap as well.

We already talked about, again, these are three separate issues here, and they're all independent. Despite the fact of plaintiff trying to wrap them up together, they are three separate issues and they should be addressed separately.

Unless your Honor has any further questions, I will go on to "query."

This is somewhat of a different issue, although I think it is somewhat related grammatically to the issue we have addressed with "restrict."

I think it's telling that they indicated that -- I think plaintiff indicated that we want to put the request, the notion of a request in here to focus the jury on what happens at the search engine or the results to focus the jury on what happens at the search engine. But the claims specifically aren't formulated to restrict a query -- a search at the search engine. So there is a logic to that.

I think this sort of undercuts -- underlies why plaintiff doesn't want to include requests or search results in there. There doesn't seem to be a dispute we're talking about search here. They say that, to be sure, the formulated query will be used in performing a search, and their own construction includes search.

But as a matter of common sense -- and I don't think there was really any dispute on this. That when we think of a query, especially a search query, that it's something that you would use to request results to a search.

I mean the query is to an information retrieval system. That's the whole point. The whole point of it is to get results, and you get those by doing a request.

The dependent claims talk about receiving results, and Phillips says that it's useful to use claims, both asserted and unasserted. It doesn't matter whether the claims are asserted or not. We can still look at them to determine what the meaning of the terms that are asserted

are. They don't just somehow vanish from the patent because they have been asserted in a case.

I think defendants' construction is consistent with Figure 39 which depicts an HTTP request. This is what is getting sent to Google, and that is a request for search results.

Now, Xerox also says that the specification doesn't say anything about sending the formulated query to a search engine to receive results.

That is sort of an incredible statement, I think, Your Honor. If you look, it says it all over the place.

This is slide 56. In column 49, 49 to 54: "After processing the query by submitting it to the information retrieval system (e.g., Google, Yahoo!, Northern Lights), ..." the results are returned.

Figure 40 talks about obtaining results and directing the query to locate a node.

Column 48, lines 31 to 34. "A document service request and the personality associated with an uploaded document identifies entities that are used to perform other document service requests such as queries."

Well, a query is a document service request. In here, it's for search results. That is just what our construction provides.

Now, Xerox says that you could store a query or display a query. I mean I guess that is possible, but that is not what this patent is about. This patent, as Xerox says, this is about using a query for performing a search. And it's about providing precision recall of information retrieval systems. I don't know how that is served by just displaying or storing a query.

And even in their first paragraph, in their opening brief, they say that the patent relates to search technology, and that you are using the content of a document to generate a query to an information retrieval system. And that the objective of this is to improve the quality of information retrieval systems, and that precision recall means both successfully retrieving information and retrieving relevant information. So the whole purpose of this patent is about what the query is going to do at the information retrieval system.

There is no claim -- they seem to be suggesting a claim differentiation issue between claims 11 and 18, somehow suggesting that the notion of results is improperly included in the query because results are mentioned at 11 and 17. It's pretty clear there are other elements in 11 and 17 beyond results. They're talking about ranking results and enriching selected content results. Neither of those things are in our definition of query. So there is no

claim differentiation issue.

The next one here is "classification label."

The dispute here -- there are really two disputes here. One is whether -- and, frankly, I didn't really fully understand this first one was a dispute until I think we got their response brief -- and then the second -- which is whether the classification label needs to classify or used to classify. And then the second one is whether a label needs to be a word or phrase or whether it's a label in any format.

Again, we've talked about what these labels are. That you have a classification label that corresponds to a category. And the use of "classification label" is very consistent throughout the specification. I don't think there is any real dispute about this.

There are these words, label, science. Where does that classify? You know that if you look in the genetics node, you are going to find genetics documents. And the system knows that, and that is why they put it in there.

The DMOZ ontology that is disclosed in the specification uses these same types of labels.

The Google directory engine is referred to the specification. That is slide 66. That also uses words or phrases.

This consistent use of labels in this manner shows that this is the way that we should be interpreting label in this case. And so we found some definitions that are perfectly consistent with that:

A descriptive, classifying, or identifying word or phrase.

A word or phrase indicating that what follows belongs in a particular category.

Xerox seems to take an issue with this because they're not from a technical dictionary, in citing Phillips. But Phillips also says when terms are used in a non-technical sense that it's appropriate to use general dictionaries and that is what is going on here.

They certainly are helpful here. There doesn't seem to be any real dispute that the term "label" is used here not in a technical computer science sense but talking about in a classification system such as the Dewey Decimal System in the Library of Congress.

In those systems, words are the labels. There is a whole hierarchy there that is somewhat similar to the DMOZ hierarchy, although not exactly the same. And it uses these words, like philosophy, world history, that sort of thing.

Now, there are call letters or numbers associated with those systems, but those call letters or

numbers aren't the labels, in and of themselves. They're just associated with it, but even those, it's important to note that even those letters -- I'll address this in a little bit -- do serve a classification purpose and so that is critical even in these systems.

Now, plaintiff talks about how our construction doesn't make sense because computer electronics represents electronic documents in zeroes and ones.

Well, that is a straw-man. No one would think that the label "genetics" has to be sitting in the inner workings of a computer as genetics. We all know it's 0s and 1s, and certainly the inventors knew that, and they knew that when they wrote claim 9, it included nouns and verbs. That someone wouldn't think they were excluding 0s and 1s being used. And, in fact, "genetics" written in a binary computer language is no less a word "genetics" than if it was in French, if it was in Chinese or anything else. And it's notable that even numbers are represented by binary code in the ASCII code that they point out to. And this is at slide 72.

Now, Xerox construes classification label as a label in any format that identifies a category in the organized classification context.

You had asked plaintiff's counsel about this. You know, we do have a dispute about the word or phrase

which they actually don't even address in their construction because they include the word "label" which we still think is a word or phrase, but they say it identifies a category.

So I guess using Figure 39 that the classification label would not be "genetics" but it would be something that identifies the category "genetics." It's not clear at all what it is that is being identified here. I mean if you look at how the spec talks about it, it refers to the categories as the classification label.

So, for example, in Figure 33, it talks about the DMOZ category. It's business, finance, computer. Those are the labels. So to say that it identifies the category, I mean what is the category then? It doesn't really make any sense.

And then they say it's a classification label, but yet Xerox is saying -- this is slide 74 -- that it is not being used for classification.

Classification is the act or method of classifying. And the classification label is the label you use for that method. I mean just by mention, just by common sense. So the notion that a classification label shouldn't be used for classifying just is contrary to the English language.

Now, they set up this "identifying" argument through a number of different dictionary definitions. One

of them included in their opening brief, which we didn't see, that appeared today said that it's an item that is used to identify something or someone. And they admitted that the second part of it, that makes it clear that it's like a label.

I made this argument just because I had wanted to make sure that at some point in my life, I had a Campbell soup label in a PowerPoint.

THE COURT: Mission accomplished.

MR. PERLSON: Yes.

(Laughter.)

MR. PERLSON: Then they point to computer dictionary definitions. Now, they say the technical meaning of "label" in computer science is simply an identifier.

Well, it doesn't look like there is any single technical meaning of label to me. There are 12 labels there, and they haven't said why they liked -- they're using this one. There is no support why this one is appropriate. And we would submit, your Honor, that there is not really any need to go to the IBM Dictionary of Computing for this because what we're talking about is a classification in ontology.

Here are some other dictionary definitions.

Now, getting back to this point of classifying. Even the numbers like in the Dewey Decimal System, you have

576. 500 is science, 570 is life science, and 576 is genetics. So if a librarian is going to place the books, even if just using the numbers, they can use that 576 to classify the book.

But if it's just some random selection of numbers and identifier, as plaintiff seems to allow, you can't do that. It's not a classification label anymore. It's an identifier. There is all sorts of things that have identifiers: license plates, library cards, and things like that. But that is an identifier.

The claims require a classification label, not an identification label.

"Selected document content" is next.

Okay. So here we are at "selected document content." Let me just clarify what is going on here and what the confusion is. It's not simply the fact that there is not an "a" before this and then "selected document content." I think that contributes to the confusion that there is no antecedent basis, and we're not saying that it's an automatic case that it's indefinite if there is not an antecedent basis.

What we're saying is here, you don't know what the selected document content is. It has to be selected in some way, but by whom? By what? For what purpose? You have no idea. I mean who knows what it could be.

It could be a pop-up window that appeared on the user's computer screen. They didn't select that but it's there and maybe it can be inputted into the system.

Could it be content that a user had cut-and-pasted from a web page for some other purpose completely? That was certainly selected for one purpose, but was it selected for the purpose of being an input to this system? No.

Is it content randomly chosen by the user or computer user's computer or a website that the user visited? Is it a random selection? Is that included within this?

Is the content on the web page that a user navigates to that the publisher chose to highlight, so the publisher chose something that it wanted to show? Is it a favorite? I mean any of these things. And we don't know.

I think that during plaintiff's presentation, they mentioned the notion of like a patron at a restaurant making a selection from a menu. That is what selection means. Someone is making a choice. But when the waiter takes that down and takes that to the line cook who maybe gives it to the chef, they're not making selections at each one of those other instances of the menu item. They're not making a selection of a menu item. It's already been selected.

So if I select something on my computer, then I

chose to download it, and then if this claim system is going around looking at my computer, running this system on top of it and happens upon this document that I chose to download three days ago, is that selected document content? I don't know.

I mean that is really the problem. And the specification doesn't answer it. I mean it kind of does the same thing on slide 83, column 41 at 10 to 14. It just kind of assumes it's there.

Now, I think that during the presentation, plaintiff had pointed to a portion of the specification where there might be some sort of automatic selection or that documents might be picked out.

That sort of, to me, just shows the confusion here. It kind of goes back to the earlier slide. Do we add that to the list of things that can be "selected document content" or don't we? How do I know, as a competitor? I want to build a system and I want to sit down and figure out whether a document -- I want to have a "not selected document."

There is no way to answer that question. And that is why we cited the Halliburton case as the principle of indefiniteness. We're not saying it is the exact same situation as Halliburton. These claims are read differently, but it's the bounds, that you don't know the bounds of the

claim. What is selected document content? What isn't?

We have to be able to provide a construction for that; and we would submit, your Honor, there isn't one. We certainly haven't found one from plaintiff.

What they've provided, they made an argument that this is simply the input to the claimed method.

Well, but that doesn't tell us anything really. I mean, obviously, document content is getting into the method or system somehow. If that is what is "selected" means, then it doesn't mean anything because the patent would mean the exact same thing without it. And we know from Federal Circuit precedent that claims are to be interpreted with an eye towards giving effect to all the terms in the claim.

In fact, if you look at Xerox's construction, it doesn't even include the notion of selection at all. That is not even in it. Instead, they have this construction where the document content can be all or part of the document.

Now, I think plaintiff pointed to Figure 38, and I think he is dead on, that is what the document content is. But that is not all or part of a document.

And if you look at it on 39, again and again and again, throughout, it's always talked about as if it's a document, and a whole document.

This portion of the specification -- and this is

on slide 87 that Xerox cited and I think mentioned today -- is from column 48, 52 to 55. It says: "... as shown in Figure 38, the document content 3612 or alternatively limited context ... surrounding the entity 3808 is analyzed by categorizer 3610."

But that is two different things. Document content is something different than limited context. The limited context is used in one of the dependent claims. One of the dependent claims talks about looking what is around the entities to see what is there. So this is just a total non sequitur. It has nothing to do with defining what document content is.

And, again, there is just no construction. Plaintiff hasn't provided one. We would submit under Halliburton that would show we have an indefinite term.

If you have no questions on that, I will move on to everybody's favorite, "order of steps."

I don't think there is any real dispute about the law here that when the steps are performed in the order recited as a matter of logic or grammar that they must be performed in that order, or when the steps implicitly require that they be performed in the order written, like such as, for example, when the subsequent step refers back, that they're in order. Both of these are true here.

And this shows it. We talked about how in 1(c),

you are using the organized classification content that you built in (a) and in claim (d), you are using the entities that were identified in (b). And then in (d), you are using the label that was assigned in (c).

Claim 18 is basically the same thing.

So when most of the steps of a method refer to the completed steps of a prior step, they should be performed in order. This the E-Pass case.

Now we're at slide 93.

And Xerox concedes that step (a) of claim 1 must be performed before (c) and (d). It concedes that step (b), entities, must precede the completion of step (d), and it concedes that step (c) must precede the completion of step (d).

Now, Figure 40 I think is very useful to talk about what is going on here in the order. This is really -- you saw before, I would kind of walk through Figure 40 and how it applies to the dependent claims. This really describes the flow. That when you extract the entity from the document content, then you have the query, and then you do the search. It's the same order that the claims require.

Now, Xerox argues that you could assign a category and then add it to the query and then assign another category and add it to the query.

I think this is really just part of their --

this is really just a derivative of the "one or more" categories step. It doesn't work that way. Since there is only a single category assigned, it's assigned and then you move on.

They also say that the claim language doesn't preclude some sort iterative process whereby the identification step will find an entity, and then the query formulation step will add it, and then there is another query. So you have like identifying the entity and then adding it to the query; identifying the entity, adding it to the query; back and forth.

That is not what the claim says. The claim says you are identifying a set of entities. You are not identifying entities. So you identify the set and you use that set in the later term. So you have to have a set first before you can use it as a later term.

I mean I guess it's possible that you could have a system like that, but that is not the claim they wrote.

Even their own construction of "restrict to search to the category," which I will not suggest that you enter but I think it's useful for a demonstration purposes, seems to acknowledge that the entities have been identified and assigned before you have the query formulated.

Now, Xerox cites to this catchall language at the very end of the specification, the kind of language you

might see at the end of almost any patent, that talks about the fact that, oh, it's not limited by what we said above. You can do it in all sorts of different ways, blah blah blah, but that type of generalized language doesn't undo what is claimed. It doesn't undo what the patent says. And we cite the University of Rochester case.

This is in slide 98.

So we have the order of steps, claims 2 and 19. Similar issues. It refers back. You have claim 2 which is further limiting the query that has already been performed in claim 1.

The specification is useful on this, too.

On the left is where you initially would run the query; and then on the right is where, if you don't get your accurate results, you go and you use this aspect vector and then you would add it on. Then you might add the terms on. And then you would run it again. But that is after the query has already -- not only already been formulated but it's after the queries in fact already have been run and you have already obtained results.

They point to -- this is on slide 102 -- an excerpt from the specification 49, 31 to 35, saying that this somehow suggests that these are all added at once.

But it just says that in one embodiment, they're appended to the query and that these things would exist in

the query. It doesn't say that in claim 1, you would do it once. It just says at some point, you end up with this, and that is just what this shows.

And unless your Honor has any -- does your Honor have any questions?

THE COURT: No, just really whether any of colleagues wish to weigh in at this point.

MR. FENWICK: Two minutes, your Honor.

THE COURT: Certainly.

You have about a half hour left on that side.

MR. PERLSON: What do you want? The Elmo?

MR. FENWICK: Yes.

MR. PERLSON: I'll get it.

MR. FENWICK: Thank you.

So, your Honor, I just want to take a couple minutes to sort of step back.

This "restrict a search to a category" piece of the last limitation of the claim is a big problem to the plaintiff in this case. The accused products are implemented in software and so you might choose to give the plaintiff the benefit of the doubt and say, yes, they didn't know how the stuff worked before they got into discovery.

But now they know. They've got the source code. They've spent a lot of time looking at it. They know they have a big problem.

In the spirit of cooperation with my codefendant, I tried to give Mr. Perlson my best line and he didn't use it for some reason. I'll have to find out later.

But we are accused, defendants are accused of trying to import limitations from the specification into the claims. What we're trying to do is read limitations from the claims into the claims. We're just trying to keep this limitation of "restrict to the category" in the claims. The plaintiff is trying to read that limitation out of the claims because they know now it's a big problem for them, and they employ a few different devices to try to do that.

One thing they do, your Honor, is try to focus your attention on this issue of whether only a single classification label is assigned. That makes sense from their perspective because, candidly, that is a closer issue, a closer claim construction issue.

The issue of construing "restrict a search to the category," that is not a close issue. It's there in the claim. It's quite explicit what that means if you look at the spec.

If you were to drop the last limitation from the claim, the automatically formulating a query limitation, and you only had the first three limitations, the comprising rule would say, yes, an assigned observation of a classification label -- assigned classification label is

"one or more."

But in that last limitation, we get restrictive language. We get language of limitation. The comprising rule about "one or more" goes to claim limitations that call for the presence of something, and the rule says you can't get out from under -- you can't get out of the claim just by adding another claim; right?

With respect to category and that last limitation, you are not talking about the presence of something. You are talking about language of limitation, restricting a search to that category.

But, again, we would say because that language of limitation is in there with respect to the category wherein the search is restricted, the logic of the rest of the claim language suggests that only a single classification label is assigned.

But your Honor could find -- and we think that is the best construction. Your Honor could find that one or more classification labels is assigned, but the search still has to be restricted to a single category. And your Honor could find that one or more classification labels can be assigned and the search has to be restricted to the categories that correspond with those assigned classification labels.

We don't think that is the right construction, but your Honor could go to those interim steps without

leaping all the way to the plaintiff's position, which is that we're going to focus you on the issue of assigned classification label, and then we're going to hitch to that this other issue of restricted category. If you go our way on assigned classification label, you are going to have to go our way on restricted category.

The two issues are not linked up that way.

In fact, they have gone to great lengths to try to accomplish what I'm talking about. There is a sentence in our opening brief that says the crux of the dispute between the parties is whether only a single classification label may be assigned, and that shows up in the responsive brief. It's in the presentation today. We admit that that is the real issue between the parties.

That sentence appears in a section of the brief that is about that categorizing limitation. It's clear from the context that what we're saying is the crux of the issue about the categorizing limitation is whether a single classification label, only a single classification label is assigned.

That is not the core of the dispute between the parties. The core of the dispute between the parties on claim construction is about this restricted category limitation and are we going to say it's actually there in the claim or are we going to close our eyes and pretend it's

not there.

The other thing I would say, your Honor, is the parties did not give enough attention to Figure 40 in the briefing here. I would urge your Honor to spend some time focusing on Figure 40 because Figure 40 is a very explicit illustration of what is going on in the claims that are asserted in this case.

If you follow it, your Honor, you have the entity being extracted here and added to the query, and then this categorization process takes place with the assignment of a single classification label. And then the query is directed to the node, the single node that corresponds with that assigned classification label.

At that point, claim 1 has been practiced. That step happens every single time in Figure 40, every single time.

Mr. Stark talked about the possibility of popping up to a parent node. The only time you pop up to a parent node is if you don't obtain any results at all. No results are obtained. Then you change the location of the node to the parent node and try it again because you didn't get any results and you need to have results to get anywhere with this.

Then we ask are the results accurate? If the results are not accurate, if they're not the results you are

looking for, then we try the techniques that are claimed in the dependent claims. We go get some stuff from around the entities and we add it to the query, to the short run aspect vector.

Then we take that new query, that augmented query and we go back to the same node, the same node that corresponds to the assigned classification label and we try that.

And if that is not accurate, then we move -- and that short run aspect vector is I think addressed in claims 2 and 3.

If that still doesn't get us accurate results, we go to the category vocabulary limitation. We go get some more words that sort of define the class, and we take that further augmented query, a different query, a new query, and we run that one against the single node that is identified by the assigned classification label.

And so you see the actual practice of the claims illustrated in Figure 40, and you always practice claim 1 in Figure 40. You may or may not get to the dependent claims because you may or may not get accurate results, but you always practice claim 1 as its construed by the defendant.

THE COURT: Before you take that down, at what point are you saying you have completely practiced claim 1 at least one time?

MR. FENWICK: You know, you practiced claim 1 at least one time when you had directed the query to the located node, because then you know that your query was formulated to the "restrict a search to the located node."

THE COURT: So do you need to have results in order to practice claim 1?

MR. FENWICK: You don't need to have results to practice claim 1, but you need to have formulated a query that would restrict the search to the particular category, the "where" that we've been talking about, to the particular category of the information system that corresponds to the assigned classification label. And if you have done that, and you have come up empty, you have practiced the claim.

But you have specified "where" in the information retrieval system you are going to conduct that search. And once you decide you don't get results, I need to pop up higher, I need to search a bigger space, then you are outside the claim.

The claim doesn't have to read on every single possible permutation of the flowchart in the diagram that is Figure 40. But every single time, when you go through the flowchart, you practice claim 1.

THE COURT: That's it for defendants at this point?

MR. PERLSON: Yes, your Honor. I don't have any

rebuttal to that.

(Laughter.)

THE COURT: All right. Plaintiffs on claim construction.

MR. STARK: Thank you, your Honor.

Your Honor, as I said at the outset, we're not here saying that the queries formulated by the claim in this patent or claims are unrestricted. On the contrary, the claim says they are restricted.

It's not accurate and it wasn't even in our first brief, this is a straw-man the defendants are bringing up, to claim that we are trying somehow to read "restricted" or "to restrict" out of the claim. It's in the claim. The claim goes to the jury.

If we think about, what are we really about here today? The jury's task is going to be to determine whether the claim is infringed. They've got to look at the elements of the claim.

Now, the construction can help resolve ambiguities. It can help shed lights on issues of law. It can help with your Honor's instructions to the jury as to how they're going to read the claim. They're going to be presented with something that doesn't have "to restrict" in it, and we've never suggested that that would be the case. That wouldn't be the case under any scenario.

The exercise that we're about today is really trying to resolve ambiguities. It's not the Court's job, quite frankly, and very respectfully, to just rewrite the claim just because defendants would like you to rewrite it. We want to put in new words in place of all the words of the claim. The words of the claim are what they are.

If there is not an ambiguity, there is not a reason to construe or come up with some new form of words that will give the jury two forms of words that they have to compare against the accused products. It's really primarily to resolve ambiguities. And I haven't heard the defendants put their finger on any ambiguity of that "to restrict" at all. They simply say, well, we want to substitute "confine" for "to restrict."

THE COURT: So everybody agrees "restrict" or some word like "restrict" has to be in this claim, because it's in the claim; right?

MR. STARK: Right.

THE COURT: But there is a dispute, it seems to me, as to what is restricted. You maintain the restriction doesn't mean that the search has to be limited to a single node or a single category; correct?

MR. STARK: That's right.

THE COURT: And I understand the defendant is to say it does have to be restricted that way; correct?

MR. STARK: I think that is right.

THE COURT: And that is the claim construction dispute, is it not?

MR. STARK: I think it is, but I think that really was the point of our second brief in particular is that that is really where the dispute is. Are we talking about one classification label, only one, a single classification label, and a single category, therefore, that is searched or are we talking about more than one? And the defendants stood here and said, well, that is really not what we're talking about. That is kind of a side issue.

I think your Honor had put your finger on it. That is precisely the issue. Are we talking about one or more than one? And I have gone through where it says in the claim, the law is on "a" meaning one or more than one.

And that, incidently, it's not just a default rule. That is a pretty hard and fast rule if one looks at the claim on the case law about this. It's about as hard and fast of a rule that we find on patent law. It is full of a lot of rules, some of which are pretty murky, but that one that "a" means one or more, really not working. There is hardly any exception to it.

And we looked at the claim language where it says -- actually, can we put that up again?

So it says, it starts with a classification

label and a category of information. Those are going to be one or more. And the case law tells us, the Baldwin case amongst others, when you have a subsequent use of the things, the category of information, the assigned classification label, it just refers back here and re-invokes the plural meaning of the original thing.

Now, counsel tried to claim there is some sort of sleight of hand going on here or tried to suggest there was an agreement there was no antecedent. I'm not aware of that. There are agreements some things refer back to other things. We didn't say there is no antecedent to the category of information.

In any event, it plainly is. It's right there in the claim language, and the Federal Circuit tells us claim construction begins and ends with the claim language. That is what we're about. That is the most important thing.

We've got a category of information. That means more than one, potentially. A classification label means more than one, potentially.

Counsel tried to say, well, I couldn't really follow what he was saying but he was trying to say somehow this didn't quite make sense if you read it the way I read it.

And with all respect to counsel, I just can't agree with that. The first section there on organized

classification of document content sets up the relationship between classification labels and categories of information. It's not necessarily one-to-one, as counsel said. It's a classification label. Each one of those correspond to a category of information. So in each case, one or more corresponds to one or more. So that is the set up.

Then a classification label as a organized classification of document content is assigned to the document content. So one or more assigned to the document content.

And then at the end, it is simply saying the category of information or the categories of information that correspond to those labels go to the query to restrict the search.

There is nothing surprising about that. It's talking about, thus, the assigned classification label. The Federal Circuit anticipates that and says that is going to be just a reference to the one or more classification labels.

Then in the nature of the English language, you would expect you would say the category of information that corresponds to the assigned classification label. That is just -- to make it comprehensible in English, that is the way you would write it, but none of that takes away from what the Federal Circuit tells us as to how one construes

language like that.

Also, none of this is at all inconsistent with the specification. It's quite consistent with the specification. As I said, there are many places where the specification talks about assigning multiple classification labels.

If we could go to slide 13.

Just point out here, once again, here in the specification, it says, the fourth line down, "These classification labels," plural, "in one embodiment are appended to the query." Labels, plural, go into the query. Really, it couldn't be much clearer than that in the specification.

What our dispute is, beyond the question of whether it's one classification/one category, I think there is only one answer to that point. It is multiple at least potentially of each. It's one or more of each.

But beyond that, what we're really talking about, what we heard a lot about from the defendants, is how is the search done in the information retrieval system after it gets the query which was formulated by the claim? And there was a lot of talk about, well, we look at a single folder. We're only going to look at one dot. This is really what they're driving at, to try to argue here as well this whole claim means you are only going to have to look at

one particular place.

Well, that is clearly just not the case. If you have multiple classification labels that can correspond to multiple categories, it could be several of these.

I also explained how with regard to Figure 40 -- I'm going to come to that in a moment -- the search done by 40 can be broadening to go up to a parent, up to a parent, and gradually expand the search. But the point is it's focused by what the classification label is. What the category was that was specified.

So just to put that big picture context in there, the whole claim is talking about, in the first instance, a search for information about entities. So if you just had a query about some entities, like Michael Jordan, for example, you might get it a lot of documents about a great basketball player even if you were looking at someone that was in computer science, and that is the starting point before you get to the invention.

The invention says, well, let's figure out from the context of the document what category of information or categories we're talking about in this particular document that we're looking at, and then we'll go search for Michael Jordan using those classification labels, those categories to refine that search, to give you some greater precision. That is what it says. It doesn't say which of many methods

need to be used to implement that search.

Just to come to Figure 40 for a moment. There are several points I want to make sure are clear on Figure 41.

One is that this is an example that was talked about in the patent as an example that is showing an embodiment, and embodiments are not limiting so there is a lot of stuff in here which doesn't necessarily read to claim 1. It does limit claim 1.

In particular, these items up here, defendants talk about, Mr. Perlson talked a little bit, too, some of these have to do with what is going on with dependent claims. I agree, that wouldn't be implicated by claim 1.

However, I think two things are very important to note here. One is that when you get to, in this process, down to where some results have been obtained, if there were no results obtained, as I think Mr. Fenwick pointed out, then you can adjust what node you were looking at, then you can keep going up to broader nodes, searching more and more of the tree of categories of information.

So it's clearly two things. One is how the search is done. The claim doesn't talk about that. It doesn't talk about adjusting the node. It doesn't talk about reformulating. It doesn't talk about -- it doesn't even say you have to look in one node. It says it's

formulating a search which is restricted.

But this is an example of how a search could be implemented. It might be a search that could search broader parts of the tree than just one, just one node and one folder.

Another aspect of this that is pretty interesting. I think Mr. Fenwick touched on this briefly. He said that when you get to direct query to locate the node, you have done, you completed one iteration of claim 1.

I think that is close but not quite right. First of all, claim 1 doesn't say and watch the query off and have it start doing something, which is what "direct query to located node" here says. Claim 1 says formulate a query, so that would be actually just a little bit just prior to step 4010.

The other thing is your Honor asked the question about there being use of the word "a query," "generate a query" right at the outset of the claim. I mentioned Figure 40 in reference to that.

The claim actually contemplates you could formulate more than one query. And this whole thing in this chart is an example of formulating more than one query, and several queries could be formulated iteratively potentially, and that whole formulation of several theories would be practicing the claim.

So the claim isn't only one query because, again, it says a query. The Federal Circuit tells us that is one or more. It actually could be several queries. And this is an example of an implementation embodiment in which you have several queries formulated and kicked off in sequence with successfully broader searches. That is one embodiment.

The point here being defendants are trying to read into this claim narrowing material about how specifically a search is conducted, and the claim doesn't reach how the search is conducted.

It actually shows a number of different ways a search could be conducted, none of which is necessarily limited to only searching one folder or one node in the tree of information.

THE COURT: But how about, does the first search, the first time you enter the query, does it have to have a restriction on what is searched? Where the search occurs?

MR. STARK: I think the first search -- as you go through the claim, any query that is generated, the first search or another one, has to be restricted by supplying classification labels or categories in addition to entities. That doesn't mean that it has to be necessarily a search that is limited all to a folder that is all the way down at

the bottom of a leaf of the tree. It could be -- all that is required is a classification label.

If we look at defendants' favorite diagram here, defendants acknowledge all these things are different, are classification labels.

THE COURT: Is this Figure 39?

MR. STARK: Yes, Figure 39.

Science is a classification label. That could potentially be a classification label that goes into query, and it might result in a broader search than just the genetics node down there. It might include all these things.

THE COURT: Under your construction, could you search -- are you practicing the claim if you search "science" first and then later search "genetics" for some reason? That is, if you go from a broader to a narrower?

MR. STARK: I think you would be. The claim, it doesn't -- just as you have to have classification labels and put them in the query.

THE COURT: Are you practicing a claim if the first search is at the top level of 3904?

MR. STARK: You could potentially be. If you searched and you were -- if the result of your query, if the scope of the query was such that you just were getting everything concerning Michael Jordan, I think, that would not be this claim. But you could potentially have a search

that is implemented by starting at the top level and where it is looking is all of these different nodes. But what is deemed to be responsive of the scope of the query is Michael Jordan in the field of computer science.

The claim doesn't speak to the efficiency, the particulars of what file folders or what tables or how the information is even stored in the information retrieval system. It doesn't speak to that. What it speaks to is the scope of the query. What is going to be responsive to the query? And it would have to be that Michael Jordan, documents pertaining to Michael Jordan and computer science are at least favored in some way so it's going to be focused, as the specification said, in that area.

THE COURT: I want to save you two minutes to talk about discovery. You have about two minutes left.

MR. STARK: Thank you, your Honor. Very briefly.

So a lot of what the defendants spend their time on, trying to restrict and narrow the scope of the claim, is all embodied in Figure 39 is an example. The inventor's testimony was about particular embodiments that you might find. All that is just embodiments. They're getting away from the claim language because they don't find what they need in the claim language.

Briefly on the format of the labels. Counsel

gave the example of the Dewey Decimal System which I think quite nicely supports us. They pointed out in the Dewey Decimal System, 576 would be the identifier for "genetics" and using that, a librarian could go to the stack and classify a book, put it on the shelf.

That is exactly what we're saying. The classification label is the identifier that allows you to make that correspondence between I've got some information. Where do I put it? Where I got a query, where can I look?

THE COURT: But what if the books are just numbered in the order that they are purchased by the librarian?

MR. STARK: That then wouldn't be a classification label, because that doesn't help you. It doesn't associate the book with the classification.

THE COURT: It is just an identification.

MR. STARK: Yes, merely an identification. We're not saying the classification label is merely an identification like a serial number of that sort. But that is not -- it's not the description. Let me put it this way. The organized classification of documents essentially consists of contents. If you look at the Dewey Decimal System under 576, you would find the content of genetics, so the content of genetics would be classified there. That is what the classification is. Then you need an identifier to

help you find that classification, either the card catalog or on the stacks.

That is what it is. It's not that the identifier itself isn't used. When I get a new book in, I don't say, "aha, it's 576." I have to say, "oh, this is a book about genetics." I find genetics and I say, "oh, okay. It's identified by the label 576" and go to the shelf accordingly, go to the index accordingly. That is what we're talking about.

And just to wrap up on the issue of "selected document content." It doesn't matter where the document was selected or by whom it was selected or by what it was selected, how it was selected.

I come back to my chef analogy, trying to identify what the chef does. He doesn't care where the selected food items come from, how they were selected. To describe his activity, it's just to prepare the selected food items.

It's the same thing with the computer. If one thinks about the claim as the computer program function, which actually is really what it is, it would be your own function, generate a query from X, where X is document content, selected document, whatever is the given document content.

I think that is quite understandable. And one

can tell from the claim itself quite readily what the bounds of that are. That the claim says it's the content from which you get the entities. It's the content that you categorize. Nothing else in the claim depends on. In fact, nothing at all in the claim depends on how the document content was selected or by whom or when or anything that counsel mentioned.

With that, your Honor, I think that concludes my comments on the claim construction.

THE COURT: Okay.

MR. STARK: Thank you, your Honor.

THE COURT: Any rebuttal on claim construction from defense?

MR. PERLSON: Yes, your Honor. A few points.

First of all, going back to this notion of the construction of "restrict" and including the meaning of "restrict to the category" in the construction.

The whole point of this process is to provide constructions for words in the claim. The fact that they don't -- the fact that the words remain in the claim doesn't defeat the purpose of this. We're going to be arguing to the jury based on these constructions. On appeal, the parties would need to rely on these constructions. We wouldn't be able to say the Federal Circuit, well, if the jury found that our systems met their construction that they

were wrong because the claim requires it to restrict to the category.

The Federal Circuit would tell us that is what the construction is. That is where they're supposed to do. And maybe we would be able to appeal the construction, but for purposes of the infringement, you have to apply the construction.

And they say, well, why do defendants need to rewrite the construction? Well, we would submit, your Honor, that the rewriting here is being done by plaintiff by eliminating, essentially admittedly, "restrict to the category" completely.

A few other things. Let's pull up the slides here.

On Figure 39, again, I just want to clear up the science/biology/genetics. The query is to that path. It's genetics/science/biology. There was some suggestion to the contrary.

And similarly, here on Figure 40, it's very clear that what is talked about here is that at 4008, if the located node has not been searched with the query, then the query as it is defined is directed to the located node. It's not other nodes.

The description of Figure 40 is very clear. And, again, this notion of Figure 40, that there could be

multiple queries and everything, but the rest of the Figure 40 as we have shown, and this is also in our tutorial as well, it talks about dependent claims. There is a loop. And, you know, yes, you may go back and run the search again, but that's the subject of the dependent claims.

Go to slide 29.

So I think that in the rebuttal, plaintiff basically conceded that they intend to include this in their construction, and that a situation where you would actually be searching beyond the assigned category, that that would still somehow be within the claims.

Now, they tried to get out of that by, again, trying to tie in the "one or more" labels issue go into it, but I amended the slide that to show why that really doesn't matter.

THE COURT: Is it your amendment of your slide 29?

MR. PERLSON: What?

THE COURT: Is it your amendment of your slide 29?

MR. PERLSON: Exactly. Excuse my scribble.

So, yes, this is slide 29. And now what I have done with it is I have assumed for the sake of argument here that the claim allows for two categories to be assigned. Let's assume that there is two categories assigned. Then

you would have two categories searched, if that is what the patent allowed.

But under Xerox's construction, you would still be able, apparently, to search all the other categories. I think this shows that, clearly, as Mr. Fenwick had discussed, these are two different issues. Whether it's "restrict to the category" or "restrict to the categories," the search goes to the category that is assigned. It can't go on this other area because that is not what the patent is about. That doesn't provide the precise recall.

And this is precisely, what is on the right, that the plaintiff is trying to accomplish by reading out the claims -- reading out the "restrict to the category" limitation to the claims.

Plaintiff also pointed -- this is their slide 13 -- to an excerpt from the specification to try to say that more than one classification label can be assigned.

First of all, if you look at this, it says -- this sort of makes the follow-up to this point.

First of all, this is not talking about what the claim is. It's obvious because it says, restrict the scope of the query, i.e., the entity and the context vector. That's subject to the dependent claim.

But in any event, to the extent it's relevant here, it's relevant to show that I underlined "restrict to

the folders." That when you use the classification, they're restricting the scope of the query to the folders corresponding to the classification labels in the document collection of an information retrieval system. So that wouldn't allow for the example on the right where I have added an extra category that is assigned.

This is slide 12 from plaintiff's presentation. And I took the liberty of drawing some oddly drawn arrows, but hopefully I can explain what I am trying to convey here, and that they're now saying that the assigned classification label in the last step relates to the classification label in the first step. That it refers back to that.

But if that was really true, if they really believe that to be true, then they would say that each classification label corresponding to the category of information in that first step would correspond with the category of the assigned classification label in the last step.

I did it the other way?

MR. FENWICK: Category to category.

MR. PERLSON: Okay. Sorry. Let me start over again. I'm going to the fly here.

So what they have agreed to now is the agreed construction is a classification label. So the agreed construction is that the assigned classification label in

1(b) is the classification label that is assigned in 1(c).

They don't refer back to claim 1 for that; right? And under their logic, the antecedent basis should refer back to the first element for both the category and the class, and they don't do that, and so their logic doesn't work out.

There was a reference to the classification label, and that the librarian would somehow not use 576 to classify?

I mean I don't think that is right. I think that they do use that. A librarian knows what the Dewey Decimal System. They might use 576 just in the same way they would use genetics. And it seems like the plaintiff conceded the classification label, in fact, does need some sort of classification purpose. And they're saying that just a simple number, it wouldn't be a classification label, but as we have shown, that is what their construction allows. And based on that concession, it should be rejected.

"Unselected document content." Plaintiff says the system doesn't care what whether it's selected or how to select it.

Well, it's in the claim. It's a selected document content, so presumably it does care. And if they didn't care, Xerox didn't care, their claim didn't care,

the system didn't care, then they could have written it "document content," but that's not the claim they wrote. They wrote "selected content document." So because every claim term has to have meaning, they can't just wash it away by saying it doesn't matter. It does. And we would submit there is no way to give meaning to that.

THE COURT: Thank you.

MR. FENWICK: So, your Honor, just addressing very briefly this argument about antecedent to the category. The reference in the first limitation to each classification label corresponding to a category of information, and information retrieval system? That is a reference generally to this correspondence and association. It's a reference to this group.

The antecedent rule goes to a prior reference to the particular thing that is at issue later and not to this sort of a generalized sense. And that is why, to try to reiterate what Mr. Perlson was saying, when the parties located the antecedent basis for the assigned classification label down here, they looked up to this element right here (indicating) -- I'm sorry -- to this element right here (indicating) and the prior reference to a classification, and not all the way back up to this element (indicating) which is describing kind of the general architecture in referring to these things in the abstract as opposed a

particular instance.

THE COURT: So in element (d), they were looking to element (c) but not all the way to element (a).

MR. FENWICK: That is right. That's what they were doing in the classification label. The same logic goes to the category information.

Plus, we have this language of limitation again. This language of limitation "restrict a search" to the category of information. So the claim is not about the presence at this point. It's not about the presence of one thing. It's about this limitation. And so, again, the comprising rule goes to situations where the claim calls for the presence of a thing and you can't evade infringement by adding a second thing.

If the claim of was written to mean what they say it means, then it would have said information concerning the set of entities to a category information identified by the assigned classification label.

That language would apply for the possibility that there is more than one category in play there and you are restricting it to a category.

But even then, you still got this language of limitation in there. And if I say, if the claim calls for a widget and there happens to be a second widget, you still, the claim requirement is still true. There is still a

widget. There happens to be an additional one.

If I say a search is restricted to a category, and then someone comes along and restricts a search to a group of two categories that are in different parts of this system, it's no longer true that the search is restricted to one of those categories.

So you haven't evaded infringement by adding something to the operation of the process. You are doing something very different. You are doing something very different and you are no longer practicing the language of the claim.

THE COURT: Okay. Thank you.

Well, that's it on claim construction. I've left us a few minutes to talk about discovery and schedule.

There, let me say I am not going to modify the schedule to leave it open-ended awaiting for the Court's claim construction ruling. I don't know when you will get the claim construction ruling. It may be that you end up having to write your expert reports with alternative constructions. That happens from time to time in my cases.

I understand it happens regularly in other judge's cases so I'm not going to grant the request to change that, which I understand is part of what the defendants are asking for.

I am, however, willing to give some minimal

extension to complete fact discovery and, if necessary, to complete expert discovery. There are different time frames mentioned in the letters. I'm going to leave it to all of you to see if you can agree on how much additional time you need based on what I have just told you about not having an open-ended schedule.

In terms of whether to require the defendants to supplement their interrogatories at this time. At this time, I'm not inclined to make the defendants do that, but I have reserved two minutes for plaintiffs, if they wish, to argue to the contrary, and then defendants can respond briefly, if they wish to do so.

MR. STARK: Thank you, your Honor. I will be brief.

The difficulty that I have, your Honor, with defendants disclosures of their invalidity contentions is it truly is kaleidoscopic. There is nothing in there that I can point to to say, well, now I'm on notice that this is what they're going to argue.

First of all, there are just so many. No one is going to be anywhere near trial with this many contentions and this many pieces of prior art. There are a handful in there that are of particular significance, and I'm sure that must be. That is opaque to me.

THE COURT: But why isn't right now the time to

require them to narrow and be more precise? You are going to get an expert report. You are going to get an expert deposition. You are going to get a pretrial order. We're going to get there. Why now?

MR. STARK: Well, as to why now, your Honor, I would say we're almost at the end of the fact discovery, subject to maybe it gets extended by a minimal amount. We were almost at the end of that. We're going into expert reports, and I think we need to be able to prepare to understand what they're about with these contentions.

On our infringement contentions, we have, well, it could be this, it could be that, it could be 15 other things. We have given them, subject to some tweaking perhaps, you know, this is what we're going at.

On the contrary, on their side, we've got, well, I don't have a single claim chart there that says here is something which we believe is an anticipation. What we have instead is, well, here is a reference which might have the elements. And, actually, I'm not going to say this is the organized classification of document content or this is a label. This might be anticipation. Well, if it's not, then combined with 15 other references, literally like 15 other references, then maybe it's an obviousness case, and I'm not going to tell you why a person skilled in the art would actually be motivated to put those various pieces together

to plug the holes.

And just as one example here. So this is from one of Yahoo!'s references. We picked one to illustrate the point. We really could have picked any of them to make a similar point.

This is on the Ford reference. And they say, for the defining organized classification of document content element, it says, as shown in Figure 3, blah blah blah, and it says, present invention will look for the temporally contiguous occurrence of a particular keyword or set of keywords, such key words to be used to infer the general topic or subject matter.

It doesn't say there that there is an organized classification of document content. It doesn't say what that would be. It says we're going to do some inference. It's not going to tell you how.

As to this, they say maybe that is anticipation, maybe it's obviousness. We're not going to tell you which. We're not going to tell how you combine the references to get there. And they have I think 27 other references for which they don't give any claim chart at all. And Section 101, Section 112, where they give us virtually no information on what their defenses are.

THE COURT: I understand your position.

All right. Let me hear briefly from the

defendants.

MR. STARK: Thank you, your Honor.

MR. LISSON: Your Honor, defendants have taken the same approach to the invalidity contentions in this case as it has done in many patent cases across the country, really, and plaintiff hasn't provided any reason or authority to require more here.

We've pointed out exactly where in a reference we believe each limitation would be found by providing both the page citation and, as you saw, the text from the reference.

Now, I guess one of the complaints is that we didn't explicitly say whether a chart was an anticipation chart or an obviousness chart.

I think it's pretty clear those references for which every limitation has a corresponding citation is an anticipation chart. Those that were done in combination or didn't have -- well, they were only done in combination really -- are an obviousness chart, and the reasons to combine the motivations to combine are in the narrative where we lay out both of the scope of the prior art, the motivation to combine and supporting documentary and testimonial evidence.

THE COURT: And when are you going to limit which bases on which you are trying to invalidate this

patent?

MR. LISSON: Well, your Honor, I think we laid out contentions based on what we understand to date both in terms of the facts, Xerox's contentions and the possible claim construction rulings. That may change over the next few weeks.

But then, as your Honor identified, expert reports will be really where, if anything has changed in between then and now. The plaintiff will be on notice of exactly what our contentions are, our arguments, any inferences, opinions will be obtained in the expert report, which they will obviously receive prior to having to put together their expert report.

THE COURT: All right. Thank you.

I'm going to adhere to my inclination and at this time deny the plaintiff's request to require the defendants to supplement their responses to the interrogatories. Mind you, I don't imagine that the time limits we set in this case will allow for the defendants to meaningfully present all of the theories that they have in their interrogatories at this point, but I'm satisfied for this point in the case, the plaintiff has what it needs.

We will take claim construction under advisement; and we will be in recess. Thank you.

(Claim construction hearing ends at 11:43 a.m.)