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NOTICE OF MOTION AND MOTION

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PLEASE TAKE NOTICE that, on August 10, 2023, at 1:30 p.m., or as soon thereafter as the matter may be heard, before Judge Edward M. Chen via Zoom videoconference, Defendant Webinar.net, Inc. (“Webinar.net”) will move for an order entering partial summary judgment against Plaintiff ON24, Inc. (“ON24”) pursuant to Federal Rule of Civil Procedure 56.

STATEMENT OF RELIEF SOUGHT

As set forth in the Memorandum of Points and Authorities, Webinar.net moves for pretrial partial summary judgement regarding invalidity of all claims in U.S. Patent No. 9,148,480 (‘480 patent). All claims of the ‘480 patent should be found indefinite and therefore invalid under 35 U.S.C. § 112(2).

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Webinar.net moves for partial summary judgement of invalidity of all claims in the ‘480
4 patent. All of the independent claims recite the term “communication manager object” which,
5 under 35 U.S.C. § 112(6), is a nonce term for performing various functions. Since the ‘480
6 patent specification fails to disclose corresponding structure for performing the recited functions,
7 all claims of the ‘480 patent are indefinite and therefore invalid under 35 U.S.C. § 112(2).

8 **II. CASE HISTORY**

9 On February 27, 2023, Webinar.net moved to modify the case schedule to include a claim
10 construction hearing (Markman hearing) in order to construe the claim term “communication
11 manager object” under 35 U.S.C. § 112(6) which ON24 objected to for being untimely and
12 without good cause to modify the case schedule. ON24 also moved to strike Webinar.net’s
13 defense under 35 U.S.C. § 112(2) asserting the argument under 35 U.S.C. § 112(6) is a new
14 invalidity argument requiring a motion to amend the invalidity contentions. During a hearing on
15 March 21, 2023, the Court denied the motion to amend the case schedule to include a claim
16 construction hearing, but granted Webinar.net’s request for claim construction under 35 U.S.C.
17 § 112(6) as well as the invalidity argument under 35 U.S.C. § 112(2) through a motion for
18 summary judgement since the invalidity argument under 35 U.S.C. § 112(2) was included in
19 Webinar.net’s original invalidity contentions. (Dkt. 69).

20 **III. LEGAL STANDARD – SUMMARY JUDGEMENT**

21 Summary judgement is proper when “there is no genuine dispute as to any material fact
22 and the movant is entitled to judgement as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is
23 genuine if it can reasonably be resolved in favor of the nonmovant. *Anderson v. Liberty Lobby,*
24 *Inc.*, 477 U.S. 242, 248 (1986). A fact is material where it could affect the outcome of the case.
25 *Id.* “When the parties raise an actual dispute regarding the proper scope of these claims, the
26 court, not the jury, must resolve that dispute. *See Markman v. Westview Instruments, Inc.*, 52
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1 F.3d 967, 979 (Fed. Cir. 1995) (holding that claim construction is a matter of law).” *O2 Micro*
2 *Intern. v. Beyond Innov*, 521 F.3d 1351, 1360 (Fed. Cir. 2008).

3 **IV. CLAIM CONSTRUCTION - 35 U.S.C. § 112(6)**

4 **A. Facts**

5 The ‘480 patent (Exh. 1) includes six independent claims all of which recite the term
6 “communication manager object”.¹ All of the independent claims recite various functions
7 performed by the “communication manager object”, such as “each component exchanges data
8 with the communication manager object”. Claim 1 is an example of the independent claims from
9 the ‘480 patent (emphasis added):

10 1. An audience computing device comprising:

11 a processing device;

12 a memory device;

13 an application framework that receives a communication manager object via a network
14 connectivity device and executes the communication manager object within the
15 application framework;

16 wherein the application framework receives and executes at least two communications
17 components and a presentation component within the application framework using the
18 communication manager object and **each component exchanges data with the**
19 **communication manager object** within the application framework during a
20 presentation to present the presentation to a user of the audience computing device
21 without downloading and installing an application, and the communication manager
22 object manages interface and display of the presentation via the application framework;
23 and

24 wherein the communication components are at least two of a slide communications
25 component, a media communications component and a menu ribbon component, each
26 of the communication components comprises graphical interface information, and the
27 communication manager object automatically modifies the graphical interface
28 information to a standardized interface format.

¹ All of the dependent claims of the ‘480 patent include the limitations of the corresponding independent claim and therefore also recite the term “communication manager object.”

1 **B. One Skilled in the Art**

2 A person of ordinary skill in the art (“POSA”) would possess a bachelor’s degree in
3 computer science or computer engineering, or an equivalent degree, or possess equivalent
4 academic and/or industry experience.

5 **C. Legal Standard**

6 **1. Claim Construction Generally**

7 The Federal Circuit has held the proper judicial construction of a claim and its terms is
8 from the viewpoint of a person of ordinary skill in the field of the invention; the court must
9 determine how such a person would understand the claim in the context of the particular
10 technology and the description in the specification, with due reference to the prosecution history.
11 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 1315, 1317 (Fed. Cir. 2005). The Federal Circuit
12 held specifically in *Phillips*: “[T]he person of ordinary skill in the art is deemed to read the claim
13 term not only in the context of the particular claim in which the disputed term appears, but in the
14 context of the entire patent, including the specification.” *Id.* at 1313. Further, in *Phillips*: “The
15 claims, of course, do not stand alone. Rather, they are part of ‘a fully integrated written
16 instrument,’ consisting principally of a specification that concludes with the claims... For that
17 reason, claims ‘must be read in view of the specification, of which they are a part.’” *Id.* at 1315
18 (quoting *Markman v. Westview Instruments*, 52 F.3d 967, 978 (Fed. Cir. 1995) (internal citations
19 omitted). The Federal Circuit further emphasizes: “As we stated in *Vitronics*, the specification
20 ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the
21 single best guide to the meaning of a disputed term.’” *Id.* at 1315, quoting *Vitronics Corp. v.*
22 *Conceptronic* 90 F.3d 1576, 1582 (Fed. Cir. 1996). With further emphasis, the Federal Circuit
23 stresses: “It is therefore entirely appropriate for a court, when conducting claim construction, to
24 **rely heavily** on the written description for guidance as to the meaning of the claims.” *Id.* at 1317
25 (emphasis added).
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1 Although the Federal Circuit has authorized the use of extrinsic evidence (all evidence
2 external to the patent and prosecution history), the Federal Circuit has also recognized that
3 “while extrinsic evidence ‘can shed useful light on the relevant art,’ we have explained that it is
4 ‘less significant than the intrinsic record in determining the legally operative meaning of the
5 claim language.’” *Id.* at 1317, quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862
6 (Fed. Cir. 2004) (internal citations omitted). Accordingly, it is well established that when
7 engaging in claim construction, the weight of the evidence starts with the claim language, then
8 the patent specification, then the prosecution history, and finally the far less significant extrinsic
9 evidence.

10 **2. Claim Construction under 35 U.S.C. § 112(6)**

11 35 U.S.C. § 112(6) provides: “An element in a claim for a combination may be expressed
12 as a means or step for performing a specified function without the recital of structure, material,
13 or acts in support thereof, and such claim shall be construed to cover the corresponding structure,
14 material, or acts described in the specification and equivalents thereof.” “The failure to use the
15 word ‘means’ when reciting a claim element creates a rebuttable presumption that 35 U.S.C. §
16 112, sixth paragraph, does not apply.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348
17 (Fed. Cir. 2015). However, this presumption is overcome when “the claim term fails to ‘recite
18 sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for
19 performing that function.’” *Id.* at 1348 quoting *Watts v. XL Systems, Inc.*, 232 F.3d 877, 880 (Fed.
20 Cir. 2000).

21 “To determine whether § 112 ¶ 6 applies to a claim limitation, we must inquire ‘whether
22 the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently
23 definite meaning as the name for structure.’ If those words lack a sufficiently definite meaning,
24 § 112 ¶ 6 applies.” *Rain Computing* at 1005 (Fed. Cir. 2021) quoting *Williamson* at 1349. Also
25 relevant is whether a claim term is a nonce word that can substitute for the term “means”. *Rain*
26 *Computing* at 1006 citing *Williamson* at 1350. For example, the Federal Circuit held “the word
27

1 ‘module’ in the claim term ‘distributed learning control module’ ‘does not provide any indication
2 of structure because it sets forth the same black box recitation of structure ... as if the term
3 ‘means’ had been used.’” *Rain Computing* at 1006 quoting *Williamson* at 1350.

4 **D. Argument**

5 **1. Indistinguishable from *Rain Computing*.**

6 This case is indistinguishable from *Rain Computing, Inc. v. Samsung Elecs. Am., Inc.*,
7 989 F.3d 1002 (Fed. Cir. 2021) where the Federal Circuit found the term “user identification
8 module” to be a means-plus-function term under 35 U.S.C. § 112(6),² and then found the claims
9 invalid under 35 U.S.C. § 112(2) because the patent specification failed to disclose structure
10 corresponding to the function recited in the claims.³ The Federal Circuit found the term “user
11 identification module” to be a nonce term because it has no commonly understood meaning and
12 is not generally viewed by one skilled in the art to connote a particular structure. *Id.* at 1006.
13 Similarly, in this case the term “communication manager object” has no commonly understood
14 meaning and is not generally viewed by one skilled in the art to connote a particular structure.
15 Although the term “communication manager object” is described in the ‘480 patent specification,
16 in *Rain Computing* the term “user identification module” was also described in the patent
17 specification, *including how it was connected to various parts of the system and how it*
18 *functioned*; however, the Federal Circuit held this was not enough to provide *sufficient structure*.
19 *Id.* at 1006. Equivalently in this case, although the term “communication manager object” is
20 described in the ‘480 patent specification, it is described in terms of *how it is connected to*
21 *various parts of the system and how it functions*. (Exh. 1, col. 4, lines 24-49). Further, the ‘480
22 patent specification does not disclose any algorithm (e.g., flowchart) which is required under
23 *Rain Computing* since the invention is implemented using a general purpose computer. *Id.* at
24 1008. The Federal Circuit held specifically: “Without an algorithm to achieve the ‘control
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27 ² *Rain Computing* at 1006.

28 ³ *Rain Computing* at 1007.

1 access' function, we hold the term 'user identification module' lacks sufficient structure and
2 renders the claims indefinite." *Id.* at 1008.

3 **2. Intrinsic Evidence - Claims**

4 All of the independent claims in ON24's '480 patent recite the term "communication
5 manager object" for performing various functions, such as "each component exchanges data with
6 the communication manager object". That is, the claims may be rewritten without affecting the
7 scope to read, for example, "a communication manager object for exchanging data with each
8 component". Accordingly, if the term "communication manager object" is found to be a nonce
9 term, then the claim element as a whole is a means-plus-function element since the claims may
10 be rewritten alternatively to recite "a means for exchanging data with each component".
11

12 The word "object" in the claim term "communication manager *object*" is no different
13 from the word "module" recited in the claims at issue in *Rain Computing* at 1005, 1006. That
14 is, the word "object" in the claim term "communication manager object" is the same as the word
15 "module" in "user identification module" since neither provide any indication of structure and
16 they both set forth the same block box recitation of structure ... as if the term "means" had been
17 used.⁴ Both the claims at issue in *Rain Computing* and the claims at issue in the '480 patent
18 involve software; accordingly, the term "software module" is no different than "software object",
19 particularly since the '480 patent ascribes no particular meaning to the word "object". Further,
20 the prefix "communication manager" imparts no structure because it merely describes the
21 function of the term.⁵ Accordingly, the claim language itself, and particularly the nonce word
22 "object", is *significant intrinsic evidence* that "communication manager object" is a nonce term
23 that should be construed under 35 U.S.C. § 112(6) as a means-plus-function term.
24

25 ⁴ The Federal Circuit held "the word 'module' in the claim term 'user identification module'
26 'does not provide any indication of structure because it sets forth the same black box recitation of
27 structure ... as if the term 'means' had been used.'" *Rain Computing* at 1006 quoting *Williamson*
28 at 1350.

⁵ *Rain Computing* at 1006.

1 information”, “verifies permissions”, and “allows to proceed” are all *functional language* that
2 describes the invention by “what it does rather than by what it is.”⁹

3 In addition, the above paragraph does not describe the “communication manager object”
4 as being a software module that is well known to those skilled in the art. To the contrary, the
5 above paragraph describes the “communication manager object” as implementing the “complex
6 interaction within the various components” which is contrasted with the conventional “mashup
7 of components – each unaware of the other, and each competing for the limited resources
8 available to the browser...”. In other words, the “communication manager object” is described
9 in the above paragraph as an inventive software module that is, by definition, not known
10 conventionally to those skilled in the art and therefore cannot connote structure to those skilled
11 in the art.

12 **V. INVALIDITY UNDER 35 U.S.C. § 112(2)**

13 Having established the term “communication manager object” is a means-plus-function
14 term under 35 U.S.C. § 112(6), then as directed by the Federal Circuit in *Rain Computing* the
15 Court next determines the corresponding structure in the patent specification that performs the
16 function recited in the claim, and if the patent specification fails to disclose adequate
17 corresponding structure, it renders the claims invalid for being indefinite under 35 U.S.C. §
18 112(2).¹⁰ “If the function is performed by a general-purpose computer or microprocessor, then
19 the second step generally further requires that the specification disclose the algorithm that the
20 computer performs to accomplish that function.” *Rain Computing* at 1007 citing *Aristocrat*
21 *Techns. Austl. Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008).

22 In the present case, the recited functions are performed by software executed on a general
23 purpose computer or microprocessor. Further, nothing in the claim language or the patent
24 specification provides an algorithm for performing the recited functions of the claimed
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27 ⁹ *Application of Swinehart*, 439 F.2d 210, 212 (C.C.P.A. 1971).

28 ¹⁰ *Rain Computing* at 1007.

1 “communication manager object”. The above paragraph taken from the patent specification at
2 col. 4, lines 24-48, which provides the only description of the “communication manager object”,
3 describes the term *in how it is connected to various parts of the system and how it functions*;
4 however, the Federal Circuit held this is not enough to provide *sufficient structure*.¹¹ The patent
5 specification is devoid of any flowcharts or other description of an *algorithm* which is the
6 required structure under *Rain Computing*. Failing to disclose the required algorithm for
7 performing the recited functions of the claimed “communication manager object” renders all of
8 the claims invalid for being indefinite under 35 U.S.C. § 112(2).¹²
9

10 **VI. CONCLUSION**

11 For the foregoing reasons, Webinar.net’s Motion for Partial Summary Judgement should
12 be granted, and all claims of the ‘480 patent should be found indefinite and therefore invalid
13 under 35 U.S.C. § 112(2).
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27 ¹¹ *Rain Computing* at 1006.

28 ¹² *Rain Computing* at 1008.

1 Dated: April 3, 2023

Respectfully Submitted,

2
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WEBINAR.NET, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on April 3, 2023 to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system.

Executed on April 3, 2023, at Scottsdale, Arizona.

/s/ Howard H. Sheerin
Howard H. Sheerin
Attorney at Law