

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

CORRIGENT CORPORATION,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Case No. 6:22-cv-396-ADA-DTG

**DEFENDANT CISCO SYSTEMS, INC.'S REPLY CLAIM CONSTRUCTION
BRIEF**

TABLE OF CONTENTS

	<u>Page</u>
I. '369 PATENT	1
A. "idle line" (claims 1, 3, 7) / "idle trace" (claims 15, 18, 20)	1
B. "subsidiary module" (claims 1–3, 5, 8–12, 15–17, 21–24)	2
C. "backplane" (claims 5, 10, 15, 21).....	3
D. Order of Steps (claims 1, 8, 15, 21)	4
II. '485 PATENT	7
A. Preambles are limiting (claims 1, 11)	7
B. "latency measurement packet" (all claims).....	9
III. '400 PATENT	10
A. "said FDB" (claims 1, 11).....	10
B. "virtual media access control (MAC) bridge" (claims 8, 11, 18)	12
IV. '602 PATENT	13
A. "RSVP-TE" (claims 3, 15).....	13
B. Preamble (claim 15).....	14
V. CONCLUSION.....	15

TABLE OF ABBREVIATIONS

Abbreviation	Definition
'369 patent	U.S. Patent No. 6,957,369
'485 patent	U.S. Patent No. 7,113,485
'431 patent	U.S. Patent No. 7,330,431
'400 patent	U.S. Patent No. 7,593,400
'602 patent	U.S. Patent No. 9,119,602
Asserted Patents	U.S. Patent Nos. 6,957,369; 7,113,485; 7,330,431; 7,593,400; and 9,119,602
Corrigent	Plaintiff Corrigent Corporation
Cisco	Defendant Cisco Systems, Inc.
Ex.	Exhibit
Ke	U.S. Patent No. 5,841,788
Michalson Decl.	Rebuttal Declaration of Dr. William R. Michalson in Support of Defendant's Proposed Claim Constructions
Olivier Decl.	Declaration of Dr. James Olivier in Support of Corrigent's Responsive Claim Construction Brief

TABLE OF EXHIBITS

Exhibit No.	Exhibit
Ex. A	<i>Idle</i> and <i>Subsidiary</i> , Collins English Dictionary, Harper Collins (5th ed. 2000) (CISCO_CORRIGENT-00001526)
Ex. B	<i>Idle</i> and <i>Subsidiary</i> , Random House Webster's Unabridged Dictionary 2d (2001) (CISCO_CORRIGENT-00001533)
Ex. C	<i>Subsidiary</i> , Funk & Wagnalls New International Dictionary of the English Language, World Publishers Inc. (2000) (CISCO_CORRIGENT-00001528)
Ex. D	U.S. Patent No. 5,841,788 (CISCO_CORRIGENT-00001525)
Ex. E	<i>Backplane</i> , IEEE 100 The Authoritative Dictionary of IEEE Standards Terms, IEEE (7th ed. 2000) (CISCO_CORRIGENT-00001523)
Ex. F	<i>Backplane</i> , Novell's Complete Encyclopedia of Networking, Novell Press (1995) (CISCO_CORRIGENT-00001527)
Ex. G	<i>Backplane</i> , Newton's Telecom Dictionary, CMP Books (2002) (COR-CSC00002334–38)
Ex. H	IETF RFC 3209 (CISCO_CORRIGENT-00001530)
Ex. I	Corrigent Corporation's Preliminary Proposed Claim Constructions

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>AFG Indus., Inc. v. Cardinal IG Co., Inc.</i> , 239 F.3d 1239 (Fed. Cir. 2001).....	2
<i>Ancora Techs. Inc., v. LG Elecs. Inc.</i> , No. 20-cv-00034, 2020 WL 4825716 (W.D. Tex. Aug. 19, 2020).....	6
<i>Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP</i> , 616 F.3d 1249 (Fed. Cir. 2010).....	1
<i>Bell Atlantic Net. Servs., Inc. v. Covad Commc'ns Grp., Inc.</i> , 262 F.3d 1258 (Fed. Cir. 2001).....	14
<i>Bicon, Inc. v. Straumann Co.</i> , 441 F.3d 945 (Fed. Cir. 2006).....	1, 11
<i>Bushnell Hawthorne, LLC v. Cisco Sys., Inc.</i> , 813 F. App'x 522 (Fed. Cir. May 14, 2020).....	12
<i>Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.</i> , 289 F.3d 801 (Fed. Cir. 2002).....	15
<i>Digital Ally, Inc. v. Taser Int'l, Inc.</i> , 810 F. App'x 873 (Fed. Cir. 2020)	11
<i>Digital-Vending Servs. Int'l, LLC v. Univ. of Phoenix, Inc.</i> , 672 F.3d 1270 (Fed. Cir. 2012).....	11, 13
<i>Exmrk Mfg. Co. Inc. v. Briggs & Stratton Corp.</i> , 830 F. App'x 305 (Fed. Cir. 2020)	11
<i>Insituform Techs., Inc. v. Cat Contracting, Inc.</i> , 99 F.3d 1098 (Fed. Cir. 1996).....	3
<i>Interval Licensing LLC v. AOL, Inc.</i> , 766 F.3d 1364 (Fed. Cir. 2014).....	12
<i>Iridescent Networks, Inc. v. AT&T Mobility, LLC</i> , 933 F.3d 1345 (Fed. Cir. 2019).....	13
<i>Kaneka Corp. v. Xiamen Kingdom Grp. Co.</i> , 790 F.3d 1298 (Fed. Cir. 2015).....	6

<i>Maxim Integrated Prods., Inc., v. Silicon Mitus Tech., Inc.</i> , No. 17-cv-03507, 2018 WL 4657384 (N.D. Cal. Jul. 3, 2018)	6
<i>In re Packard</i> , 751 F.3d 1307 (Fed. Cir. 2014).....	8
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (en banc).....	4, 11, 12
<i>Praxair, Inc. v. ATMI, Inc.</i> , 543 F.3d 1306 (Fed. Cir. 2008).....	1
<i>Seabed Geosolutions (US) Inc. v. Magseis FF LLC</i> , 8 F.4th 1285 (Fed. Cir. 2021)	14
<i>Tandon Corp. v. U.S. Int’l Trade Comm’n</i> , 831 F.2d 1017 (Fed. Cir. 1987).....	8
<i>Versa Corp. v. Ag-Bag Int’l Ltd.</i> , 392 F.3d 1325 (Fed. Cir. 2004).....	7, 8
<i>Vitronics Corp. v. Conceptronic, Inc.</i> , 90 F.3d 1576 (Fed. Cir. 1996).....	5, 14
<i>WSOU Investments LLC v. Dell Techs. Inc.</i> , No. 6:20–cv-00476-ADA, slip. op. (W.D. Tex. May 27, 2021).....	6

I. '369 PATENT

A. “idle line” (claims 1, 3, 7) / “idle trace” (claims 15, 18, 20)

As explained in Cisco’s opening brief, the specification, claims, and extrinsic evidence all demonstrate that a POSA would understand that an “idle [line/trace]” is a line/trace that is known to be inactive. Br. at 3–5. Corrigent’s arguments lay bare that it is attempting to read the word “idle” out the claims. Opp. at 1–4. Specifically, Corrigent states, without support, that an idle line refers to a line that is simply “ready for use.” *Id.* at 2. This blatant attempt to impermissibly broaden the claims is contrary to the well-understood meaning of “idle” and should be rejected as inconsistent with the claims and the specification. *See* Br. at 3–4; *see also Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1257 (Fed. Cir. 2010); *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 951 (Fed. Cir. 2006). The ’369 patent consistently distinguishes lines which are in use (active) and not in use (idle) and explains the importance of testing only lines not in use. Br. at 4. In fact, the stated purpose of the patent is to detect “hidden failures” on such lines. Br. at 1. Corrigent argues that Cisco’s construction imports a knowledge requirement into the claims. Opp. at 2. Not so. The claims themselves require that the line/trace be “idle” at the time of testing. *E.g.*, ’369 patent, cl. 1. The only way that can be ensured is to determine the line is idle before it is tested. Cisco’s construction used the word “known,” but could just as easily have used the word “determined” in its place, which would have had the same intended effect. The critical required feature of the ’369 patent’s use of the word “idle” is that the system tests a line only when it is detected to be idle. *See id.* at 1:11–15.

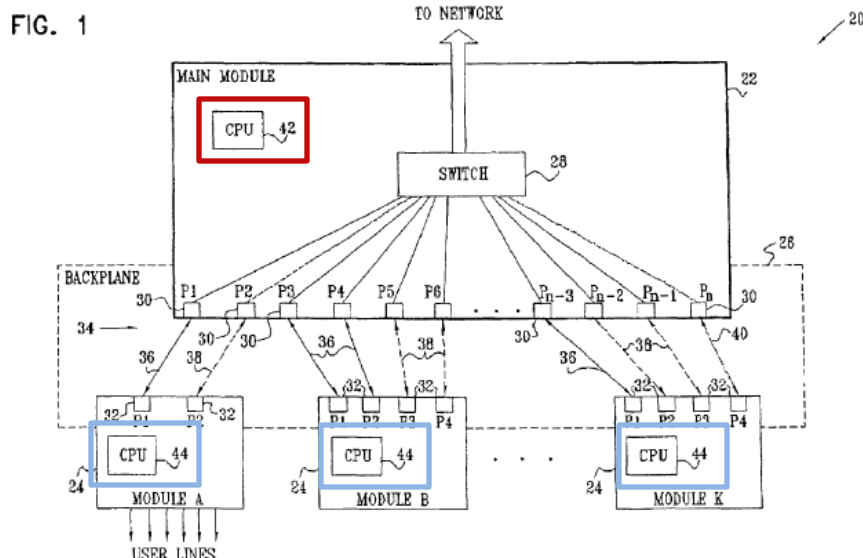
Though Corrigent objects to Cisco’s use of general dictionaries, “idle” is a commonly understood word and Corrigent does not allege there is a specialized technical meaning in the context of computer networking. Opp. at 3. General dictionaries are commonly used for nontechnical terms. *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1306, 1325 (Fed. Cir. 2008) (allowing

the use of the general dictionary in claim construction). Regardless, Cisco’s general dictionaries and Corrigent’s technical dictionary (which defines idle as “not being used, but ready”) are all in agreement—idle means inactive or not in use. *See* Exs. A–B, 7. Therefore, *AFG Industries, Inc. v. Cardinal IG Co., Inc.*, is irrelevant, as the court in *AFG Industries* disfavored the use of a general dictionary only because it was contrary to the definition in the technical dictionary. 239 F.3d 1239, 1248 (Fed. Cir. 2001).

B. “subsidiary module” (claims 1–3, 5, 8–12, 15–17, 21–24)

Cisco’s construction for “subsidiary module” appropriately reflects that a subsidiary module is under the control of a main module and not merely connected thereto. Br. at 2, 5–6. Corrigent seeks to improperly elide “subsidiary” entirely from the claims, arguing that the specification does not require a control relationship between the subsidiary module and main module. Opp. at 4. Corrigent’s argument ignores that the claims themselves require a “*subsidiary* module.” This a normal English word that means “secondary,” “assisting,” or “auxiliary,” all of which implies that it is under the control of a main system. Br. at 6. Corrigent does not provide any definition to the contrary or allege that there is a special technical meaning.

Corrigent insists that the system control processor, not the main module, controls the subsidiary module. Opp. at 5. This only proves Cisco’s point; the system control processor *is located in the main module*. Br. at 2. The patent states that “[t]he test procedure is supervised by an embedded system control processor **42** in main module 22.” ’369 patent at 5:41–45; Br. at 2. Figure 1 clearly shows the system control processor **42** inside the main module, while the subsidiary modules have general processors **44**. ’369 patent, Fig. 1; Br. at 2.



'369 patent, Fig. 1; Br. at 2. To the extent the patent recites that the subsidiary may have a processor, that is not the system control processor. '369 patent at 1:33–36. Further, Corrigent's argument that a POSA would know that a system control processor could reside elsewhere in the system is a baseless attorney argument and has no support in the intrinsic record. *See Insituform Techs., Inc. v. Cat Contracting, Inc.*, 99 F.3d 1098, 1106 (Fed. Cir. 1996) (“[A]ttorney argument cannot control in light of the language of the claim.”).

C. “backplane” (claims 5, 10, 15, 21)

Cisco's construction for “backplane” reflects what a POSA would understand a “backplane” to be: a printed circuit board into which modules are inserted. Br. at 8–10. In fact, Corrigent acknowledges the '369 patent's reference to “printed circuit traces on the backplane.” Opp. at 8 n.3.

The essence of Corrigent's argument is that the Court should ignore the specification's consistent use of the ordinary meaning of “backplane”—which is consistently recited in technical dictionaries, including one from the leading standards organization—in favor of Corrigent's self-serving expert testimony. Opp. at 9. This is both improper and incorrect. It is improper because

expert testimony cannot be used to contradict the intrinsic record. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005) (en banc) (“[A] court should discount any expert testimony that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent.”) (internal citation omitted). It is incorrect because Corrigent’s expert is mistaken. Opp. at 9. The Futurebus+’s backplane *is* a printed circuit board. Michalson Decl. ¶ 18. Any reference to “loosely” or “tightly coupled” in the description of Futurebus+ is referring to the architecture of the processors, not the backplane. *Id.* ¶¶ 18–23. In light of the ample evidence that a POSA would have understood that a backplane is a printed circuit board, the Court should adopt Cisco’s construction.

D. Order of Steps (claims 1, 8, 15, 21)

As explained in Cisco’s opening brief, the claim language itself requires the instructing step to be performed after the completion of the first selection, the configuring step must be performed after completion of both selections, and the transmitting step must be performed after both selections. Br. at 10–14. Despite Corrigent’s strawman, Cisco is *not* seeking to require all six recited steps to be performed in order.¹ Cisco seeks to impose only those order requirements that are mandated by the plain language of the claims. Corrigent admits that the transmitting step must be performed after the two selection steps (Opp. at 11), so that aspect of Cisco’s proposal seems undisputed. The only remaining disputes are (a) whether the instructing step must be performed after the completion of the first selection and (b) whether the configuring step must be performed after the completion of both selections.

¹ Corrigent’s main argument is that each of the six steps do not need be performed in that exact order. Opp. at 10–12. That is a strawman because that is not Cisco’s proposal, as set forth above and in its opening brief. Br. at 10–14.

The instructing step must occur after the first selection step. Corrigent argues that the instructing step can be performed at different times in the method, as long as it is before the “failures are checked.” Opp. at 11. This argument ignores the plain language of the claims. As explained in Cisco’s opening brief, the instructing step explicitly refers back to the results of the selecting step. Br. at 11. Without the prior selection, the subsidiary module would not know which line to use as an aid line, and the instruction would be meaningless. *Id.* Corrigent does not—and cannot—rebut this argument, and so it instead simply ignores the claim language.

The configuring step must be performed after completion of both selections. Corrigent also fails to rebut Cisco’s argument that the configuring step must be performed after the selection of the aid line and idle line. As explained in Cisco’s opening brief, the configuring step explicitly refers to the aid and idle line—both of which were selected in the selecting steps—and thus must be performed only after the selections have occurred. Br. at 11. Without first selecting the lines connecting first and secondary subsidiary modules to the switch, it would be impossible to configure the switch to link the two lines. *Id.*

The steps cannot be performed simultaneously. Corrigent’s arguments that the steps can occur simultaneously make no sense and, in any event, is unsupported by the intrinsic record. Corrigent relies entirely on the declaration of its expert, who merely opines that it is possible for the steps to be performed simultaneously if the steps in the claims are configuration settings. Olivier Decl. ¶ 25. This opinion lacks any support from the specification and should be disregarded. *Id.*; see *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1585 (Fed. Cir. 1996) (“Indeed, opinion testimony on claim construction, should be treated with utmost caution, for it is no better than opinion testimony on the meaning of statutory terms.”). Further, Corrigent’s reliance on *Kaneka* and *Ancora* is misplaced. In *Kaneka*, the specification explicitly

“contemplate[ed] continuous process steps.” *Kaneka Corp. v. Xiamen Kingdom Grp. Co.*, 790 F.3d 1298, 1306 (Fed. Cir. 2015). In contrast, the ’369 patent specification has no disclosure of a continuous process and instead recites a sequential process consistent with the claim language. *See generally* ’369 patent. Further, *Ancora* actually supports Cisco’s position. Opp. at 12. The Court in *Ancora* held that the claim language *required* that some steps be completed after other steps are completed. *Ancora Techs. Inc., v. LG Elecs. Inc.*, No. 20-cv-00034, 2020 WL 4825716, at *5 (W.D. Tex. Aug. 19, 2020). Here, Cisco has shown above that the steps rely on the outcomes of the previous steps to begin and thus it would be impossible for the steps to be performed simultaneously. Br. at 11–14. It makes no sense for “selection” to somehow occur simultaneously with configuration and instruction when the latter two steps require the selection to have been made before they can occur.

Order of steps applies to apparatus claims. In regard to claims 8 and 15, Corrigent argues that the order of steps does not apply to apparatus claims. Opp. at 12–14. This is incorrect. Corrigent’s own case supports Cisco’s position. In *Maxim Integrated Products, Inc. v. Silicon Mitus Tech., Inc.*, the court construed an order of steps in the apparatus claims because “courts will impose such a sequential order on an apparatus claim when the claim language contemplates and explicitly describes a sequential process, or when the disclosed system performs essentially similar steps as a method claim.” No. 17-cv-03507, 2018 WL 4657384, at *9 (N.D. Cal. Jul. 3, 2018) (internal citation omitted). Here, the steps in method claims 1 and 8 are substantially similar to the sequential process in the apparatus claims 15 and 21, and therefore should be construed as a sequential process. *See* Br. at 12–14. Indeed, this Court recently applied the order of steps not only to the method claim but to apparatus claims that recited similar sequential steps for an apparatus to perform. *WSOU Investments LLC v. Dell Techs. Inc.*, No. 6:20–cv-00476-ADA, slip.

op. at 9 (W.D. Tex. May 27, 2021).

II. '485 PATENT

A. Preambles are limiting (claims 1, 11)

Corrigent's arguments actually support Cisco's position that the preambles should be limiting and fail to provide any reason why they should not.

First, without the preamble, there is no context for any of the recited steps of claim 1 or 11. Assuming *arguendo* that Corrigent's characterization of claim 1 and 11 is correct, the claim reduces to (1) transmitting a latency measurement packet "in *one direction* on a network," (2) transmitting that packet back "in a *second direction*," and (3) updating information in the latency measurement packet to calculate the latency. Opp. at 15. However, network topologies that are not ring networks generally have no concept of direction. Michalson Decl. ¶¶ 25, 28. A ring network is a unique topology where one node is connected to exactly two other nodes, and all the nodes connect to form a closed loop allowing traffic to travel either in a clockwise or counterclockwise direction. *Id.* ¶¶ 24–25. Other network types have many choices in how they route traffic through the network. *Id.* ¶ 26. Hence, a ring network is a unique type of network topology where direction matters. *Id.* ¶¶ 24–25. Without the context of the preamble, the claim elements asserting a first direction or a second direction would have no meaning because other network topologies have no concept of "direction," which is unique to ring topologies. *Id.* ¶ 28.

Second, Corrigent's argument that the present invention is not limited to ring networks, but may apply to other network types only further supports why the preamble should be limiting. Claims 1 and 11 specifically recite "a ring network," whereas independent claims 6, 9, 16, and 19 recite more generally "a network." Thus, claims 1 and 11 cover the preferred embodiment of the ring network, and claims 6, 9, 16 and 19 cover the other network types. "The doctrine of claim differentiation create[s] a presumption that each claim in a patent has a different scope." *Versa*

Corp. v. Ag-Bag Int'l Ltd., 392 F.3d 1325, 1330 (Fed. Cir. 2004) (internal citation omitted). “The difference in meaning and scope between claims is presumed to be significant ‘[t]o the extent that the absence of such difference in meaning and scope would make a claim superfluous.’” *Id.* (quoting *Tandon Corp. v. U.S. Int'l Trade Comm'n*, 831 F.2d 1017, 1023 (Fed. Cir. 1987)). Corrigent fails to address this argument at all in its response. But as the Federal Circuit has stated, the difference is significant. Reading claims 1 and 11 to have the same scope as claims 6, 9, 16 and 19 would render the word “ring” in claims 1 and 11 superfluous, which would be contrary to the law.

Third, the recited “ring network” in the preamble provides antecedent basis for “the network” in the body of the claim. Otherwise, “the network” in the body of the claim would be indefinite. A claim is indefinite when it contains words or phrases where the meaning is unclear, which may be the result of the lack of an antecedent basis. *See In re Packard*, 751 F.3d 1307, 1310 (Fed. Cir. 2014). For claims 1 and 11, there is only one network recited in the claim—a ring network—and therefore, the antecedent basis for “the network” must be “a ring network.” Michalson Decl. ¶ 27. There is nothing else that could provide the antecedent basis. If the Court accepts Corrigent’s argument that “a ring network” does not provide antecedent basis for “the network,” then it should also find the term indefinite.

Finally, Corrigent’s argument regarding claim differentiation between an independent and dependent claim is incorrect. Claims 8, 10, 18 and 20 do not depend from claims 1 and 11, but rather depend from claims 6, 9, 16 and 19, respectively. Those independent claims do not recite “a ring network” in the preamble. Thus, claims 8, 10, 18 and 20 which narrow independent network-agnostic claims 6, 9, 16 and 19 to “ring networks” have no impact on claims 1 and 11. Because the preamble of claims 1 and 11 already limit those claims to a ring network, there is no

need for their dependent claims to narrow in this manner.

B. “latency measurement packet” (all claims)

A “latency measurement packet” (LMP) is a term readily understood in the art, and is not a coined term specific to the ’485 patent as Corrigent argues. In fact, the ’485 patent itself describes uses of LMPs when describing the prior art as Cisco argued in its opening brief. Br. at 19 (citing ’485 patent at 2:41–45). The fact that the ’485 patent describes the fields contained in an LMP does not mean an LMP can only be understood within the context of the ’485 patent. The only significance of Table I is to describe the fields that *may* be included in the LMP. Michalson Decl. ¶ 34. The ’485 patent states that Table I lists the fields “generally” contained in an LMP, and specifically that “[s]ome of the fields are optional,” but does not specify which fields. ’485 patent at 7:17–25. Unsurprisingly, Corrigent’s construction fails to articulate which fields are required by the LMP. Moreover, Corrigent changed its construction from requiring six fields to maybe requiring four fields. *Compare* Ex. I at 4, *with* Opp. at 19, 21 n.7. Corrigent’s own indecision and shifting positions further underscore why limiting this broad term to suit Corrigent’s litigation motives is inappropriate and unsupported. Corrigent’s difficulty in articulating a precise construction is because a latency measurement packet may include different fields depending on its function. *See* Opp. at 21 (arguing that certain fields are required by certain claims but not others).

Regardless, a POSA would understand the meaning of a latency measurement packet without needing a construction. Michalson Decl. ¶ 30. “Methods of network latency measurement are known in the art,” as the ’485 patent itself admits. *See* ’485 patent at 2:1–45. A data packet is also well known in the art. Michalson Decl. ¶ 32. Thus, a POSA would understand that a “latency measurement packet” is a packet that is used for latency measurement. *Id.* ¶ 33. Indeed, the plain

English language of the term compels such a conclusion. And as Corrigent already admitted, the fields of this packet change based on the packet's purpose. A POSA would know how to construct a data packet so that it may be used for its intended purpose, including that of the '485 patent. *Id.* ¶¶ 30–34.

III. '400 PATENT

A. “said FDB” (claims 1, 11)

Corrigent's arguments make clear that it is not seeking a “plain and ordinary meaning” construction for “said FDB.” Instead, Corrigent seeks to rewrite the claim to refer to an FDB that is *not even recited in the claim*, by replacing “said FDB” with “said FDB of the first line card.”

Corrigent's primary argument hinges entirely upon its assertion that “plurality of conjoined member line cards” includes the “first and second line cards.” Opp. at 23–24. Contrary to Corrigent's insistence, however, *nothing in the claims requires the recited conjoined member line cards to include the first and second line cards*. This fact alone is enough to reject Corrigent's proposed construction because the claims simply do not recite any FDB on the first and second line cards. Thus, the term “said FDB” certainly cannot refer to an FDB on the first line card.

As shown above, not only are the recitations of “first and second line cards” and “plurality of conjoined member line cards” separate with no link between them, but they are recited in entirely different contexts. While the first configuring step recites a “first and second line card” in a “*network node*,” the second configuring step recites a “plurality of conjoined member line cards” that are part of a LAG group “*between two endpoints*.” There is nothing in this method claim that requires the “network node” be one of the claimed “endpoints,” or that the “first and second line cards” and the “conjoined line cards” are even in the same node. And, most critically, there is nothing in the claim to require the line cards recited on the “endpoints” be the *same ones* that are recited as part of the “network node.” Thus, the entire premise of Corrigent's argument,

i.e., that the first and second line card are part of the conjoined member line cards, has no basis whatsoever in the claims.

Corrigent tries to avoid the claim language by arguing that the specification states that “the first and second line cards . . . are conjoined in a link aggregation (LAG).” Opp. at 24 (citing ’400 patent at 4:42–44). Corrigent, however, gives no justification for limiting the claim to a single embodiment in the specification, particularly where the claim language contradicts that disclosure in the specification. *See Phillips*, 415 F.3d at 1323 (“[A]lthough the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments.”).

To the extent the claims do require the first and second line cards to be part of the conjoined member line cards—contrary to the claim language—Corrigent’s next argument is “said FDB” must refer to the FDB on the first line card because the previous limitation recites sending the packet “to at least said first line card.” Opp. at 23–24. Corrigent’s argument is misleading for two reasons. First, the claims do not recite an FDB on said “first line card,” so there is no recited “FDB” to which “said FDB” could refer. Instead, the claims recite “said FDB” without referring to which of the member line cards associated with an FDB the term refers. The claims, therefore, remain unclear to which FDB “said FDB” refers. Second, Corrigent’s argument hinges upon the steps being performed in order because it relies upon the use of “said first line card” in the previous limitation. Opp. at 23–24. Corrigent agrees that there are other FDBs recited elsewhere in the claim so, unless Corrigent stipulates to the receiving, conveying, and flooding limitations are performed in order, its argument is beside the point.

Corrigent argues that claim 11 is definite because it twice refers to “said FDB of said first line card” so a person of skill would understand the reference to “said FDB” refers to the same line

card. Opp. at 24–25. Not so. Although claim 11, unlike claim 1, does recite an FDB on the first line card, the prior references show that the patentee knew how to properly refer to a *specific* FDB, but does not excuse its failure to do so here. There are multiple FDBs to which it could refer. *See Bushnell Hawthorne, LLC v. Cisco Sys., Inc.*, 813 F. App’x 522, 526 (Fed. Cir. 2020); Br. at 23–24 (collecting cases). Indeed, the limitation immediately before refers to both the first line card and the second line card, so the same ambiguity arises in claim 11 as in claim 1. *See* ’400 patent at 12:47–53.

Finally, Corrigent wrongly faults Defendants for not providing expert testimony. Opp. at 24. But Corrigent’s own expert does nothing but repeat Corrigent’s arguments under the guise of an expert opinion without providing his own analysis. Olivier Decl. ¶¶ 32–36. For example, the first half of paragraph 34 of his declaration appears to be *copied word-for-word from Corrigent’s brief*. Compare Olivier Decl. ¶ 34, with Opp. at 23–24. Courts routinely discount expert testimony that fails to provide any analysis and instead only makes conclusory allegations regarding the legal conclusion. *See Phillips*, 415 F.3d at 1318 (“[C]onclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court.”). In any event, there is no requirement that an indefiniteness finding rest on expert testimony—especially where, as here, the term is ambiguous on its face and Corrigent’s own interpretation contradicts the rest of the claim language. *E.g., Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1370 n.6 (Fed. Cir. 2014) (holding it was “unnecessary to rely on [expert] testimony (or any other extrinsic evidence)” to reach the conclusion that the claims were indefinite). Cisco therefore respectfully requests this term be held indefinite.

B. “virtual media access control (MAC) bridge” (claims 8, 11, 18)

Corrigent and its expert do not dispute that “virtual MAC bridge” is a coined term without a well-understood meaning. *See* Opp. at 26–27; Olivier Decl. ¶¶ 37–38. This admission defeats

Corrigent’s request for “plain and ordinary meaning” because *there is no plain and ordinary meaning*. Because this is a coined term without a well-understood meaning, the intrinsic record must provide objective boundaries for that term. *See Iridescent Networks, Inc. v. AT&T Mobility, LLC*, 933 F.3d 1345, 1353 (Fed. Cir. 2019). It does not.

Corrigent argues that “virtual MAC bridge” should mean “media access control (MAC) bridge that serves a virtual private network (VPN) instance.” Opp. at 26. Corrigent relies exclusively on two parts of the intrinsic record to supply the required scope of the term: the wherein clause from claim 8 and substantially identical language in the specification. Opp. at 26–27. Corrigent is incorrect. If the term itself already had the same meaning as the language in the claim, then the “wherein” clause would be redundant. Such an interpretation is not correct. *See Digital-Vending*, 672 F.3d at 1275. This “wherein” language therefore fails to provide objective boundaries to what Corrigent itself admits is a coined term without a well-understood meaning. This case is no different than *IQASR*, which Corrigent fails to meaningfully distinguish. Opp. at 27. Cisco therefore respectfully requests this term be found indefinite.

IV. ’602 PATENT

A. “RSVP-TE” (claims 3, 15)

Corrigent’s assertion that Cisco’s proposed construction of “RSVP-TE” is “limited to a description contained in [IETF RFC 3209]” is a misleading strawman. *See* Opp. at 28. Cisco’s proposal does not exclude, for example, the “RSVP-TE protocol set forth in IETF RFC 3209” *as updated by* RFC 3936, because both documents *describe the same RSVP-TE protocol*. *See id.* (citing Ex. 4 and noting that RFC 3936 updates RFC 3209). Moreover, Cisco’s construction is consistent with the intrinsic record, which has but a single definitional statement indicating that “RSVP-TE” is the protocol “described by Awduche et al., in IETF RFC 3209.” ’602 patent at 1:46–50; *see, e.g., Bell Atl. Network Servs., Inc. v. Covad Commc’ns Grp., Inc.*, 262 F.3d 1258,

1271 (Fed. Cir. 2001) (“[W]hen a patentee uses a claim term throughout the entire specification, in a manner consistent with only a single meaning, he has defined that term ‘by implication.’”) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)).

Corrigent’s attempt to broaden the scope of this term using extrinsic evidence is improper, because there is neither ambiguity nor uncertainty as to what the patentee meant by “RSVP-TE.” *See, e.g., Seabed Geosolutions (US) Inc. v. Magseis FF LLC*, 8 F.4th 1285, 1290 (Fed. Cir. 2021) (“Given the clarity of the intrinsic evidence, resort to extrinsic evidence is unnecessary.”). Regardless, Corrigent’s extrinsic evidence actually supports *Cisco*’s proposed construction. As noted above (and explained by Corrigent’s expert), RFC 3936 (Ex. 4) expressly updates RFC 3209, and therefore describes the same “well-known protocol” originally set forth in RFC 3209. Olivier Decl. ¶¶ 39–40. In addition, the Cisco publication’s chapter on “RSVP for Traffic Engineering and Fast Reroute” states that “RFC 3209, *RSVP-TE: Extensions to RSVP for LSP Tunnels*, defines the capabilities of extended RSVP” in a section entitled “Understanding RSVP-TE.” Ex. 5 at 148, 150. Based on the above, the Court should adopt Cisco’s construction.

B. Preamble (claim 15)

Corrigent appears to agree in principle that the preamble should be limiting with respect to “a first MPLS/LAG switch and a second MPLS/LAG switch.” Opp. at 30. Corrigent even agrees that this language “provides context for the invention in the claim body.” *Id.* This is precisely why the preamble should be limiting. Because Corrigent does not appear to dispute this portion of the preamble, Cisco focuses its reply on the remaining portions of the preamble, which recite “[a]n apparatus for assigning and utilizing an Ethernet physical data port in an Ethernet Link Aggregation Group (LAG) located downstream from a preceding node in a Multi-Protocol Label Switching (MPLS) network tunnel employing Resource Reservation Protocol Traffic Engineering

(RSVP-TE) tunnel provisioning.” ’602 patent, cl. 15.

LAG, MPLS and RSVP-TE are all necessary limitations on the claim scope. LAG, MPLS and RSVP-TE are fundamental to the operation of the alleged invention of the ’602 patent. In fact, the background of the invention incorporates by reference standards that pertain to MPLS (RFC 3031), RSVP-TE (RFC 2205 and RFC 3209) and LAG (IEEE 802.3ad). *See* ’602 patent at 1:25–2:17. While the body of the claim does not recite RSVP-TE, as Corrigent argues, the claim body still relies on the RSVP-TE tunneling provision recited in the preamble. The claim limitations directed to the “network tunnel” are in reference to the RSVP-TE tunneling provision as recited in the preamble. Further support for this may be found in the specification. According to the ’602 patent, RFC 2205, entitled “Resource ReSerVation (RSVP)—Version 1,” defines an “admission control” decision module. *See id.* at 1:50–60. “The admission control module is used in RSVP-TE for setting up *MPLS tunnels*.” *Id.* at 1:60–61 (emphasis added). Thus, these protocols are “necessary to give life, meaning, and vitality to the claim.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002).

V. CONCLUSION

For the reasons set forth in its Opening Brief, and those set forth herein, Cisco respectfully requests that this Court adopt Cisco’s constructions.

Respectfully submitted,

Dated: December 16, 2022

By: */s/ Shaun W. Hassett, with permission
by Brian A. Rosenthal*

Michael E. Jones
State Bar No. 10929400
mikejones@potterminton.com
Shaun W. Hassett
State Bar No. 24074372
shaunhassett@potterminton.com
POTTER MINTON, P.C.
110 N. College Ave., Suite 500
Tyler, TX 75702
Telephone: 903.597.8311
Facsimile: 903.593.0846

Brian A. Rosenthal
brosenthal@gibsondunn.com
Katherine Dominguez (*pro hac vice*)
kdominguez@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Stuart M. Rosenberg (*pro hac vice*)
srosenberg@gibsondunn.com
Ryan K. Iwahashi (*pro hac vice*)
riwahashi@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, CA 94304-1211
Telephone: 650.849.5300
Facsimile: 650.849.5333

Attorneys for Defendant Cisco Systems, Inc.