

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

NEO WIRELESS, LLC,

Plaintiff

v.

DELL TECHNOLOGIES INC. and DELL
INC.,

Defendants.

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NO. 6:21-cv-024-ADA

DEFENDANTS' REPLY CLAIM CONSTRUCTION BRIEF

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Dell’s proposed constructions each properly clarify how a POSITA would interpret the claims, in view of the specification and prosecution history. In contrast, Neo wrongly focuses on broad interpretations of isolated claim language—broad interpretations that would divorce the claims from the inventions described in the patents. Neo repeatedly suggests that, absent an express “disclaimer” or “disavowal,” Neo is entitled to the broadest possible interpretations of each phrase, but claim construction is not limited to disclaimer. In all cases, the specification is critical to claim construction and cannot be discounted. “Assigning such a limited role to the specification, and in particular requiring that any definition of claim language in the specification be express, is inconsistent with our rulings that the specification is the single best guide to the meaning of a disputed term[.]” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1320–21 (Fed. Cir. 2005) (en banc) (internal quotation marks omitted). Moreover, several of Dell’s proposed constructions are supported by express statements that rise to the level of disclaimer. For these reasons, Neo’s overreliance on “plain and ordinary meaning” constructions should be rejected in favor of Dell’s clarifying constructions.

I. ARGUMENT

A. Disputed Terms from U.S. Patent No. 8,467,366

“the ranging signal is formed from a ranging sequence selected from a set of ranging sequences [associated with the cell] for identifying the mobile station” – claims 1 and 17	
Dell	The ranging signal is formed from a ranging sequence selected by the mobile station from a set of ranging sequences [associated with the cell] for identifying the mobile station
Neo Wireless	Plain and ordinary meaning, and no construction necessary

Neo’s “plain and ordinary” meaning construction is insufficient for this term because the passive voice “selected from” limitation is ambiguous as to what performs the selecting. To that end, Dell’s proposed construction appropriately confirms that “a ranging sequence selected from

a set of ranging sequences” refers to activity performed by the recited mobile station. Neo makes three arguments against Dell’s clarification: first, it is unnecessary; second, it is not necessitated by the preamble; and third, it improperly limits the claim to a “cherry-picked” embodiment. Response at 1. None of these arguments explain why a POSITA would interpret the “selected from” limitation in a way contrary to the rest of the ’366 patent.

First, as to the necessity of a construction, Neo’s criticism that “Dell does not alter, omit, or replace a single word from the claim” is irrelevant. Response at 2. It is immaterial whether Dell altered, omitted, or replaced words in its construction. What matters is that Dell’s proposed construction would “aid[] the court and the jury in understanding the term as it is used in the claimed invention.” *Funai Elec. Co. v. Daewoo Elecs. Corp.*, 616 F.3d 1357, 1366 (Fed. Cir. 2010). Dell’s proposed additions will help the jury understand the scope of Neo’s claims, which Neo disputes, and thus the construction is necessary.

Second, Neo’s myopic focus on the preamble is deceptive because—as Neo itself recognizes—the claims as a whole require the mobile station to transmit the claimed ranging signal. See Response at 2. The disputed “selected from” phrase appears in a “wherein” clause that describes a feature of the claimed ranging signal. The fact that the claimed ranging signal comes from the mobile station informs how a POSITA would interpret the “wherein” clauses in the claim that describe the ranging signal. Specifically, because the ranging signal is a product of the mobile station, a POSITA would naturally interpret these “wherein” clauses as also referring to the operation of the mobile station.

Third, Dell is not limiting the claims to a specific embodiment. Response at 2-3. The **only** disclosure in the specification regarding this operation requires the mobile station to select a ranging signal from a ranging sequence. Neo would disregard the teaching in the specification

that the mobile station performs the selecting, based only on an assertion that this does not rise to the level of a “disclaimer.” Response at 2-3. But regardless of whether there is a disclaimer, the specification still helps inform how limitations in the claims should be interpreted. Neo is not entitled to “the term’s full scope under its plain and ordinary meaning” because the “selected from” term cannot be read in isolation from the remainder of the intrinsic record. *See* Response at 3; *see also Phillips*, 415 F.3d at 1313 (“Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.”).

Lastly, Neo’s Response highlights how its proposed “plain and ordinary” construction would create problems under Section 112. *See Ruckus Wireless, Inc. v. Innovative Wireless Sols., LLC*, 824 F.3d 999, 1004 (Fed. Cir. 2016) (applying “[t]he canon favoring constructions that preserve claim validity.”). As an initial matter, if an undisclosed element performs an action in a system claim, the claim is indefinite. *See Rembrandt Data Techs., LP v. AOL, LLC*, 641 F.3d 1331, 1339 (Fed. Cir. 2011). Neo’s insistence that anything anywhere could “select[]” the ranging sequence would create exactly that outcome. Neo’s unbounded construction would also leave the claims indefinite because a POSITA would not be able to determine at any time if a given ranging signal infringes. In this regard, Dell disagrees with Neo’s argument that *Nautilus* abrogated *Halliburton*. *See* Response at 5. For example, while factually distinguishing *Halliburton* in a post-*Nautilus* decision, the Federal Circuit did not suggest that the analysis in *Halliburton* was no longer valid. *Nevro Corp. v. Bos. Sci. Corp.*, 955 F.3d 35, 40 (Fed. Cir. 2020) (“In *Halliburton*, we held claims reciting the term ‘fragile gel’ indefinite not because infringement could only be determined

after use, but because infringement could not be determined at any time.”).¹ The claims would also potentially lack enablement under Neo’s proposed construction. There is no dispute that the specification of the ’366 patent does not describe using the serving base station to select the ranging sequences for the ranging signal. *See* Alberth Decl. at ¶23. More importantly, Neo and its expert are silent about the enablement of other potential scenarios if the “selected from” limitation is left unbounded. This is a problem for Neo because the patent must enable the full scope of the claims. *MagSil Corp. v. Hitachi Glob. Storage Techs., Inc.*, 687 F.3d 1377, 1381 (Fed. Cir. 2012) (“Thus, a patentee chooses broad claim language at the peril of losing any claim that cannot be enabled across its full scope of coverage.”).

“exhibits a low peak-to-average power ratio in the time domain” – claims 1 and 17	
Dell	Indefinite
Neo Wireless	Plain and ordinary meaning, and no construction necessary. To the extent construction is deemed necessary, “exhibits a low peak-to-average power ratio in the time domain” means “exhibits a peak-to-average power ratio in the time domain of 9dBs or less.”

The phrase “exhibits a low peak-to-average power ratio in the time domain” fails to inform a POSITA about the scope of the claim with reasonable certainty, and thus is indefinite. Neo does not dispute that “low” is a term of degree. Response at 6. As a result, the only relevant question is whether the ’366 patent provides “objective boundaries” as to what would constitute “low” in this context. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1364 (Fed. Cir. 2018) (“Our case law is clear that the objective boundaries requirement applies to terms of degree.”). Absent any objective

¹ Neo also incorrectly suggests that the indefiniteness of Neo’s proposed construction is not relevant because “Dell does not allege that infringement in this case turns on such an unknowable scenario[.]” Response at 5. The statutory definiteness requirement applies regardless of Neo’s infringement allegations.

criteria within the specification or the claims for the term “low,” the boundaries of this term of degree hinge on the subjective view of a POSITA.

Neo is first wrong to assert that the preamble context for the claims provides an objective boundary for the term “low.” *See* Response at 6-7. The issue is not whether a POSITA would “have to subjectively judge how ‘low’ a peak-to-average power ratio [] is **in a vacuum**,” the issue is whether a POSITA would have to “subjectively judge” a peak-to-average power ratio **at all**. *Id.* (emphasis added). Because Neo is still relying on a subjective determination, it does not help Neo to identify factors that “a POSITA would consider” when making this determination. *See id.* at 7. While this context may guide a POSITA’s subjective evaluation of whether a given peak-to-average power ratio is “low,” this context does not give any objective boundary as to what constitutes “low.” At best, Neo has identified objective **inputs** to the determination of “low,” but not objective **boundaries** on what could be “low.”

Neo’s second argument relying on the indication in the specification that a “relatively low peak-to-average power ratio . . . improves the power efficiency of the mobile station transmission power amplifier” is also wrong. Response at 7-8; *see also* ’366 patent at 4:36-38. Neo asserts that this provides an objective boundary because “there is a practical amount of reduction in PAPR that a POSITA would consider an improvement[.]” Response at 7. This argument still collapses into a subjective inquiry into what a POSITA would “consider.” Neo does not—and cannot—assert that all POSITAs would “consider” the same threshold for improvement. Ex. A (Supplemental Declaration of James Proctor in Support of Defendants’ Reply Claim Construction Brief (“Proctor Supp. Dec’l”) at ¶ 9. Further, Neo’s expert Mr. Alberth describes constraints on the peak-to-average power ratio “such that it does not **hinder** the efficiency of the power amplifier[.]” Dkt. 45-1 at ¶ 27 (emphasis added). But “not hinder[ing]” the efficiency is not the same as affirmatively

improving it. Proctor Supp. Dec'l at ¶ 10. Neo has not shown that there is any objective boundary on what a POSITA would consider an improvement to the efficiency of the power amplifier.

The lack of any objective boundary in the '366 patent for “low” is also highlighted by Neo’s proposed alternative construction, which is disconnected from anything in the '366 patent. *See* Response at 9-10. There is no suggestion of a 9dB threshold for “low” in the claims—nor in the specification—nor in the prosecution history. Proctor Supp. Dec'l at ¶¶ 11-12. Neo instead relies on extrinsic evidence for this threshold; essentially conceding that no objective threshold is disclosed in the '366 patent. Response at 9-10. Neo’s citations to the prior art also do not establish that a POSITA would understand “low” to refer to 9dB. Neo and Mr. Alberth reach this 9dB number by arbitrarily relying on cherry-picked examples from the prior art, such as the peak-to-average power ratio at the 10^{-4} probability level in the Baxley reference. *See* Dkt. 45-1 at p. 28 (Fig. 2). It would be equally valid to consider other probability levels (e.g., 10^{-3} or 10^{-6}) for the system in Baxley, which would provide a different baseline peak-to-average power ratio. Proctor Supp. Dec'l at ¶ 12. Similarly, Mr. Alberth’s description of the You reference—contrasting low peak-to-average-power ratio signals with those “having a [ratio] **greater than 11**” (emphasis added)—confirms on its face that POSITAs may consider other thresholds besides 9dB for identifying “low” peak-to-average power ratios. *See* Dkt. 45-1 at ¶ 28.

B. Disputed Terms from U.S. Patent No. 10,044,517

Preambles

Dell maintains that the preambles for the '517 patent are not limiting because they do not “breathe[] life and meaning into the claim[s].” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1118 (Fed. Cir. 2004). Neo’s assertion that the claims “are to operate on a multi-cell OFDMA system with given characteristics” appears to be a statement of intended use, and thus is insufficient to show that the preamble should be limiting. Response at 11; *see Arctic*

Cat Inc. v. GEP Power Prod., Inc., 919 F.3d 1320, 1328 (Fed. Cir. 2019). Further, Neo’s arguments about how the preambles in the ’517 patent require operation on multiple RF bands ignore that the body of the claims uses different language to provide the same requirement. See Response at 11-12; ’517 patent at 18:34-37 (“receiving concurrently the first signal via the **first RF band** [...] and the second signal via the **second RF band**” (emphasis added)).

“receiving scheduling information from a serving base station, the scheduling information indicating an allocation of airlink resources in a first RF band and a second RF band” – claim 1	
Dell	Receiving a singular message from a singular base station that indicates an allocation of airlink resources in a first RF band and a second RF band
Neo Wireless	Plain and ordinary meaning, and no construction necessary

“receive scheduling information from a serving base station, the scheduling information indicating an allocation of airlink resources for receiving a first signal... over a first RF band and a second signal ... over a second RF band” – claim 13	
Dell	Receiving a singular message from a singular base station that indicates an allocation of airlink resources for receiving a first signal over a first RF band and for receiving a second signal over a second RF band
Neo Wireless	Plain and ordinary meaning, and no construction necessary

Dell’s proposed constructions are appropriate under *In re Varma* to confirm that a single instance of “scheduling information from a serving base station” must meet two separate requirements. 816 F.3d 1352, 1363 (Fed. Cir. 2016). It is not sufficient to have one piece of information from one base station allocating airlink resources in a first RF band, and then a separate piece of information from another base station allocating airlink resources in a second RF band. Like the Federal Circuit’s dog that rolls over and fetches sticks in *Varma*, there must be a one “scheduling information from a serving base station” that meets both requirements. *Id.*

Neo wrongly suggests that *Varma* is inapplicable because *Varma* was focused on the use of the article “a.” Response at 13. According to Neo, the absence of “a” from the phrase “receive scheduling information” renders *Varma* inapplicable. *Id.* But Neo ignores other relevant context in the claims: the second half of the phrase at issue confirms that “scheduling information” must be “from **a** serving base station,” and other claim limitations refer to “**the** scheduling information.” 18:26 and 20:2 (emphasis added). In this context, the scheduling information should be understood as singular—just like the “statistical analysis request” at issue in *Varma*.

Neo is also wrong to suggest that “information” is inherently uncountable. Response at 13. The claims recite **receiving** information, and—particularly in the context of wireless communication systems—the receipt of information is a discrete, recognizable event. Consistent with this context, Dell proposes using the term “singular message” to clarify for the factfinder that the “receiv[ed] scheduling information” would likewise be a discrete, recognizable event. The exact phrase is not important. Whether described as a “piece of information” or a “message” or “singular information,” a POSITA would understand that the claimed scheduling information would come at once and from a single base station.

More importantly, Neo’s Response confirms its position directly contradicts the Federal Circuit’s holding in *Varma*. Specifically, Neo argues “scheduling information from a serving base station” should be read to encompass information received from **multiple** base stations. Response at 14-15. In other words, Neo would eliminate the requirement in the claims that information “from **a** serving base station” both “indicat[es] an allocation of airlink resources” for the “first RF band,” and “indicat[es] an allocation of airlink resources” for the “second RF band.” *Id.*; see also ’517 patent at 18:25-28 and 20:1-8. This is exactly what the Federal Circuit prohibited in *Varma*: “Rather, the question is whether ‘a’ can serve to negate what is required by the language following

‘a’[.]” 816 F.3d at 1363. Regardless of whether “scheduling information” is interpreted as singular, *Varma* requires the information for both the first RF band and the second RF band be from “a serving base station” singular.

“allocation of airlink resources [] for receiving a first signal with a first frame structure having first frame boundaries and a second signal with a second frame structure having second frame boundaries” – claims 1 and 13	
Dell	Plain and ordinary meaning, which means the first signal comprises a frame and the second signal comprises a frame
Neo Wireless	Plain and ordinary meaning, and no construction necessary

Dell’s proposal confirming that each of the first and second signal comprise a frame is appropriate because the plain meaning of “frame boundaries” refers to **complete** frames. Everything in the intrinsic record also confirms this understanding of “frame boundaries.” The ’517 patent clearly differentiates between complete frames, and parts of a frame, which are called “subframes” in the patent. *See e.g.*, ’517 patent at 18:44-46 (“the first **frame structure** has a first **subframe configuration** and the second frame structure has a second subframe configuration” (emphasis added)); *see also id.* at Fig. 3. And the patentee confirmed during prosecution that the claims require a “two-frame ... system.” *See* Dkt. 44-3 (February 5, 2018 Response to Office Action) at 9-10.

Neo would wrongly stretch the term “frame boundaries” well beyond its ordinary meaning, to cover **subframe** boundaries for **partial** frames. Response at 16. And Neo does not even argue that the intrinsic record requires this unusual construction. Instead, Neo argues only that there has not been a “disavowal” of the added claim scope. *See* Response at 16 and 18. But the absence of a disavowal does not eliminate the distinction in the patent between frames and subframes. Moreover, Dell disagrees that the prosecution history here is insufficient to constitute a disavowal, as a “two-frame . . . system” clearly must have two frames. *See* Dkt. 44-3 (February 5, 2018

Response to Office Action) at 9-10. Neo’s argument that the patentee’s reference to a “two-frame” system during prosecution could mean two partial frames should also be rejected. Response at 17. If the patentee’s intent was to describe parts of a frame, the patentee could have referred to a “two-subframe” system instead.

“traffic characteristics” – claims 1 and 13	
Dell	Indefinite, or in the alternative “the type of traffic being transmitted (e.g., voice, data, video)”
Neo Wireless	Plain and ordinary meaning, and no construction necessary

Neo’s vague interpretation of “traffic characteristics” confirms that the term is indefinite. Response at 19-20. Neo argues this term includes any of “a variety of characteristics of the traffic associated with the two signals, such as different frame structures and configurations being associated with different types of channels[.]” Response at 19-20. This would put no limits on “characteristics,” and obviate the reference to “traffic.” Neo’s position highlights the problem created by claims having terms with no grounding in the specification. A POSITA cannot determine the scope of “traffic characteristics” with reasonable certainty because the term “traffic characteristics” does not have an established meaning on its own, and because the term is not explained (or even used) in the specification.

Once again, Neo wrongly seeks to ignore the intrinsic record because “nowhere in the patent is there any disavowal of other embodiments.” Response at 19. It is first unclear what Neo means by “other embodiments” in this assertion; there are **no** described embodiments of “traffic characteristics” in the ’517 patent. Neo cannot ignore the relevant intrinsic record—other claim terms and descriptions in the specification—based solely on the suggestion that there was not a

“disavowal.” The claims and the specification confirm that if “traffic characteristics” has any meaning, it must be limited to the type of traffic being transmitted.

Neo’s interpretation of “traffic characteristics” is inconsistent with the language of the claims, which separately require “frame structures” and “subframe configurations.” ’517 patent at 18:44-46 and 20:8-10. Because the claims already require the “traffic characteristics” to be associated with different frame structures and subframe configurations, Neo’s broad interpretation of “traffic characteristics” would render this requirement meaningless. *See id.* That is, if “different frame structures” are sufficient to constitute “different traffic characteristics,” then the requirement that the frame structures and subframe configurations be associated with traffic characteristic adds nothing further to the claims. *See Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1257 (Fed. Cir. 2010) (“Claims must be interpreted with an eye toward giving effect to all terms in the claim.” (internal quotation marks omitted))

Neo also ignores that the specification refers to “channel characteristics.” *See* ’517 patent at 9:16-39. This language draws a distinction between characteristics of the channel itself, and characteristics of the traffic on a channel—Neo’s interpretation would eliminate this distinction. If the patentee intended to claim “channel characteristics,” then it would have used that term in the claims, instead of “traffic characteristics.”

C. Disputed Terms from U.S. Patent No. 10,075,941

“the mobile station-specific transmission parameters indicate an antenna transmission scheme [...] comprising a transmission diversity scheme or a multiple-input multiple-output (MIMO) scheme” – claims 8 and 13	
Dell	The mobile station-specific transmission parameters indicate an antenna transmission scheme, which allows for use in systems that rely on transmission diversity schemes other than MIMO and in systems that rely on MIMO
Neo Wireless	Plain and ordinary meaning, and no construction necessary. To the extent construction is deemed necessary: “the mobile-station specific transmission parameters are capable of indicating one of both (1) an antenna transmission scheme that comprises a MIMO scheme, and (2) a transmission diversity scheme other than MIMO.”

Neo does not dispute that the patentee’s statements during prosecution constituted disclaimer. Nonetheless Neo misunderstands Dell’s position on this term. Response at 22. Dell seeks a construction that avoids covering MIMO-only schemes. Dell’s position is grounded in the words of the patentee who distinguished the Wilson prior art as “exclusively directed to a MIMO system.” Dkt 44-4 (April 12, 2018 Response to Office Action) at 9. To that end, Dell disagrees with Neo’s use of the phrase “capable of indicating one of” in its alternative construction because a MIMO-only system (like the Wilson prior art) is still “capable of indicating” one of the two schemes. Dell’s construction avoids this pitfall by confirming that the term transmission parameters “allows for use” in both MIMO and non-MIMO system.² But Dell’s “**allows** for use” construction does not require **actual** use in both a MIMO and a non-MIMO system.

Neo’s analogy to “tennis golf” is informative about the parties’ true dispute. Response at 22. In Neo’s hypothetical, it suggests “the cup on each green (the transmission parameters) must be wide enough for either a tennis ball or golf ball to drop in—allowing for play with either tennis or golf ball[s].” *Id.* But Neo’s hypothetical “either ... or” construction could be interpreted to

² Dell does not object to Neo’s altered choice of term, and Dell has adjusted its proposed construction to include reference to the mobile station-specific transmission parameters.

only require that the cup be wide enough to facilitate either one of the two options, not both. Thus, Neo’s construction would potentially cover ordinary golf greens because the cups on golf greens are wide enough for one of the two alternatives (golf balls) to drop in. That’s why—in this analogy—Dell is arguing for a clearer statement that infringing cups must allow for **both** the use of a tennis ball, **and** the use of a golf. Dell is not arguing that “the ball itself (the antenna transmission scheme) must be both a tennis ball and a golf ball.” Response at 22.

It is not clear whether Neo is intentionally advancing the “capable of indicating one of” construction in order to recapture MIMO-only schemes. But to avoid any doubt, the Court should confirm that the claims require support for **both** MIMO and non-MIMO schemes.

“the mobile station-specific transmission parameters indicate [...] a corresponding subchannel configuration [...] the corresponding subchannel configuration characterized by distributed subcarriers or localized subcarriers in the frequency domain” – claims 8 and 13	
Dell	The mobile station-specific transmission parameters indicate whether the subchannels are either distributed subcarriers, or localized subcarriers in the frequency domain
Neo Wireless	Plain and ordinary meaning, and no construction necessary

Again, Neo does not dispute that the patentee’s statements during prosecution constituted disclaimer. Neo admits that “the claim requires the parameters be capable of indicating (alternatively) both a distributed and localized subcarrier configuration.” Response at 23. The only dispute remaining is whether the transmission parameters must affirmatively indicate this feature. Dell maintains that the prosecution history requires an affirmative indication of whether the subcarriers are distributed or localized.

During prosecution, the patentee stated that the claims had been amended to indicate that system transmitted subchannel information “including **whether** the subchannels are ‘distributed subcarriers or localized subcarriers in the frequency domain.’” Dkt. 44-4 (April 12, 2018 Response

to Office Action) at 9 (emphasis added). It does not matter if the applicant’s statement went farther than Neo now thinks was necessary to distinguish Wilson. *See* Response at 24. It does not matter if the applicant’s “argument hinged on the word ‘whether’” (*id.*); what matters is that the applicant distinguished prior art on the basis of “whether.” By confirming that the transmitted information must include **whether** the subchannels are distributed or localized, the applicant represented that there must be something in the information affirmatively indicating this feature. The public is entitled to rely on this clear disclaimer, and Neo cannot erase the word “whether” from the prosecution history. *See Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003) (“As a basic principle of claim interpretation, prosecution disclaimer promotes the public notice function of the intrinsic evidence and protects the public’s reliance on definitive statements made during prosecution.”)

D. Disputed Terms from U.S. Patent No. 10,447,450

“the segment having a starting time-frequency coordinate” – claim 7	
Dell	Information that identifies the starting time-frequency offset for the segment
Neo Wireless	Plain and ordinary meaning, and no construction necessary

Dell’s construction correctly distinguishes a “starting time-frequency **coordinate**” from a “starting time-frequency **resource**.” Neo’s Response confirms how it wishes to conflate these terms. Response at 25-26. As Dell explained in its Opening Brief, the ’450 patent uses “resource” to refer to a physical part of the segment, and a “coordinate” is information identifying the relative offset for the “resource.” Dkt. 44 at 18-19 (citing ’450 patent at 5:6-22 and 5:57-61). Neo does not address the differing uses of “resource” and “coordinate” in the specification.

Because Neo ignores the different terminology used in the specification, Neo’s argument that “there is a difference between ‘having’ a certain property and ‘identifying’ that property

externally” misses the point. *See* Response at 26. The physical property at issue is the starting time-frequency **resource**. The starting time-frequency **coordinate** is something that identifies that physical property. Thus, “having” the coordinate means that you have the identifier—not just the physical property. For the same reason, it was unnecessary for the patentee to write a separate claim step describing the receipt of an affirmative piece of information identifying the starting time-frequency resource. *See id.* By referring to the “coordinate,” and not just to the “resource,” the applicant confirmed that such identifying information must be included.

E. Disputed Terms from U.S. Patent No. 10,833,908

Preambles

For the '908 patent, Dell proposes the preamble is not limiting; and Neo takes the opposite position. Dell maintains that these short preamble statements do not “breathe[] life and meaning into the claim.” *Innova/Pure Water*, 381 F.3d at 1118.

Neo overstates the relevance of certain dependent claims relying on the preamble for antecedent basis. Response at 27-28. Dell does not dispute that for claims 5, 15, and 21 the question of whether the preambles are limiting is moot because these claims affirmatively recite “the mobile station” in the body of those claims. But that analysis is not applicable to the remaining claims 1-4, 6, 9-14, 16, and 19-20. Those claims do not rely on the preamble for any antecedent basis. And rather than “evinc[ing] the inventor’s intent that the preamble limit the scope of the claim” (Response at 27-28 (internal quotation omitted)), the fact that **only** claims 5, 15, and 21 refer to “the mobile station” in the body of the claims indicates that the other claims should not be limited in this way.

II. CONCLUSION

For the foregoing reasons and as stated in Dell’s Opening Brief, Dell asks that the Court enter Dell’s proposed constructions and the parties’ stipulated constructions.

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TECHNOLOGIES INC. AND DELL INC.

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served December 2, 2021, with a copy of this document via the Court's CM/ECF system.

/s/ Roger Fulghum
Roger Fulghum