

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

**ATLAS GLOBAL TECHNOLOGIES
LLC**

Plaintiff,

v.

**ZYXEL NETWORKS CORPORATION,
ZYXEL COMMUNICATIONS
CORPORATION,**

Defendants.

**ATLAS GLOBAL TECHNOLOGIES
LLC**

Plaintiff,

v.

D-LINK CORPORATION,

Defendant.

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Civil Action No. 6:22-cv-00355-ADA

Jury Trial Requested

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Civil Action No. 6:22-cv-00520-ADA

Jury Trial Requested

PLAINTIFF’S SURREPLY CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Defendants re-urge the same constructions that this Court and others have repeatedly rejected. Indeed, since Defendants filed their Reply, this Court issued yet another *Markman* Order that again spurned Defendants’ positions. PX Z (*OnePlus* CC Order). Defendants have not identified any compelling argument that warrants a different outcome.

II. TERMS FOR CONSTRUCTION

A. U.S. Patent No. 9,531,520

1. “[A/the] network device” (claims 1, 6)

Atlas’s Construction	Defendants’ Construction
Plain and ordinary meaning	“[an/the] access point”

The ’520 specification disproves Defendants’ primary argument that the inventors acted as their own lexicographers and equated the claimed “network device” with an “access point,” as both this Court and the EDTX have already held. PX E (*Sercomm/ASUS* CC Order) at 22 (“network devices are not limited to access points” in the specification); PX F (*TP-Link* CC Order) at 18 (“[T]he specification discloses that a device in a communication network can be an access point (‘AP’) or can be a ‘non-AP’ device.”). It repeatedly shows that a “wireless communication device,” which a POSITA understands to be a type of “network device,” includes non-access point stations and that access points and non-access point stations may have overlapping functionality. *See, e.g.*, DX 1 (’520) at 6:24-31 (“wireless communication devices ... may be non-AP STAs”), 6:60-61 (“In one or more aspects, a STA may act as an AP.”). Defendants never mention these passages.

Defendants contend that because Claim 1 recites both a “network device” and “stations,” “network device” cannot mean “stations” and must mean “access point.” Dkt. 45 (Reply) at 2, 3. But this Court has rejected this argument. *See* PX E (*Sercomm/ASUS* CC Order) at 22. With good reason. “Network device”—as demonstrated by the specification—is a broader term that includes

both “access points” and “stations.” There is therefore no inconsistency in Claim 1 using “network device” in one portion of the claim and “stations” in another; the latter is a subset of the former. Further, Claim 18 uses the term “access point” and underscores that the inventors did not intend “network device” to mean “access point.” DX 1 (’520) at 32:53-33:7 (claim 18).

Defendants also argue this statement from the ’520 provisional applications supports their construction: “for easy description, only the non-AP STA may be called the STA” supports their construction. Dkt. 45 (Reply) at 2-3. This argument is waived because it was raised for the first time in reply. It is also meritless. The statement does not use the term “network device,” much less equate it with an “access point.” There is no lexicography.

Defendants lastly, and curiously, point to the uncontroversial statement in the introduction section to Atlas’s brief that “Wi-Fi 6 networks generally include two types of devices: (1) Access Points (‘APs’) ...; and (2) Stations (‘STAs’)” and claim that it “highlights how the phrase ‘network device’ can have a specific meaning.” Dkt. 45 (Reply) at 1. But nothing in this statement equates a network device with only an “access point.”

In addition to lexicography, Defendants offer a tortured prosecution disclaimer argument. During prosecution, the patentees stated that claims 1-20 “are directed to Up-Link (UL) Multi-User (MU) transmissions,” which “may be simultaneous transmitted [sic] from respective stations to an Access Point (AP).” DX 1A (’520 FH) at ATLAS-00004057 (emphasis added). Defendants contend the use of “stations” and “Access Point (AP),” but not “network device,” means that “network device” must be the same as “access point.” Dkt. 45 (Reply) at 3-4. But nothing in the statement equates a “network device”—a term that is not even used—with an “access point.” The statement therefore is not “so clear as to show reasonable clarity and deliberateness, and so unmistakable as to be unambiguous evidence of disclaimer.” *Genuine Enabling Tech. LLC v.*

Nintendo Co., 29 F.4th 1365, 1374 (Fed. Cir. 2022) (internal quotations omitted).

2. “Acknowledgement information” (claims 1, 2, 4, 8, 9, 11, 12, 18, & 19)

Atlas’s Construction	Defendants’ Construction
Plain and ordinary meaning	“solicitation for information to be transmitted following receipt of the downlink multi-user frame to acknowledge the downlink multi-user frame”

Defendants have not shown lexicography, which requires the specification to “clearly set forth a definition of the disputed claim term.... [M]ere inferences drawn from the description of an embodiment of the invention cannot serve to limit claim terms.” *Sumitomo Dainippon Pharma Co. v. Emcure Pharm. Ltd.*, 887 F.3d 1153, 1159 (Fed. Cir. 2018) (internal citations omitted).

As discussed in Atlas’ Response brief, the passage cited by Defendants (’520 at 14:14-30) is a description of what “one embodiment ... may include,” and is not an express definition. Dkt. 42 (Response) at 8. Even if this statement was definitional (it is not), it would still not support Defendants’ construction because it does not include most of the words in their construction, such as “solicitation for information,” “following receipt,” and “multi-user frame.”

Defendants argue that “the phrases ‘in one embodiment’ or ‘may’ [only] pertain to MPDUs” and do not modify the rest of the sentence. Dkt. 45 (Reply) at 4. Defendants provide no support for this unusual reading of the specification. Legally speaking, when the specification uses optional language such as “may” or “one embodiment,” this “makes clear the patentee did not intend this excerpt of the written description to define [the term].” *Baxalta Inc. v. Genentech, Inc.*, 972 F.3d 1341, 1349 (Fed. Cir. 2020).

Defendants also argue that “Plaintiff has not countered with where the ’520 Patent inventors provide another definition for ‘acknowledgement information.’” Dkt. 45 (Reply) at 4. This is because the patentee did not expressly define the term “acknowledgement information.” In the absence of an express definition (or disclaimer, which Defendants do not allege), a claim term

must be given its plain and ordinary meaning. *Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1365 (Fed. Cir. 2014) (definition and disclaimer are the “only two exceptions” to the rule that claim terms are “given their plain and ordinary meanings to one of skill in the art”).

B. U.S. Patent No. 9,763,259

- 1. “Transmitting To The Transmitting Device A Feedback Frame Including Subchannel Information Measured On A First Subchannel After Receiving The NDP Frame” (Claim 1) / “Receiving From Each Receiving Device A Feedback Frame Including Subchannel Information Measured On A Subchannel That Is Allocated To Each Receiving Device Among A Plurality Of Subchannels Into Which A Band Is Divided, After Transmitting The NDP Frame” (Claim 18)**

Atlas’s Construction	Defendants’ Construction
Plain and ordinary meaning	“in response to receiving the NDP frame, transmitting to the transmitting device a feedback frame including subchannel information measured on a first subchannel one SIFS after receiving the NDP frame” (claim 1) “in response to and one SIFS after the transmitting of the NDP frame, receiving from each receiving device a feedback frame including subchannel information measured on a subchannel that is allocated to each receiving device among a plurality of subchannels into which a band is divided” (claim 18) If not construed as above, the terms are indefinite.

This Court recently rejected Defendants’ construction and held that these terms should be accorded their plain and ordinary meaning. PX Z (*OnePlus* CC Order) at 13-19. None of Defendants’ scattershot arguments necessitate a different conclusion here.

Defendants repeat the same indefiniteness arguments this Court rejected, claiming the relationship between the null data packet (NDP) frame and the feedback frame is unclear. Dkt. 45 (Reply) at 5-7. The claims, however, spell out that the feedback frame is transmitted or received “after” the NDP frame. DX 2 (’259) at 22:40-42 (claim 1); *id.* at 24:39-43 (claim 18). Defendants complain about the breadth of the term “after.” But “a claim is not indefinite just because it is broad.” *Niazi Licensing Corp. v. St. Jude Med. S.C, Inc.*, 30 F.4th 1339, 1347 (Fed. Cir. 2022).

As for Defendants' proposed construction, neither Claim 1 nor Claim 18 require the feedback frame to be transmitted/received (1) **in response to** and (2) **only one SIFS** after receipt or transmission of the NDP frame. Nor does the specification. It uses the same "after" language. *See, e.g.*, DX 2 ('259) at Abstract ("**After** receiving the NDP frame..."); *id.* at 1:62-2:1 (same).

Defendants assert in conclusory terms that "the requisite condition of 'after [receiving/transmitting the NDP frame]' is consistently used throughout the '259 Patent to signify an immediate and direct logical and temporal relationship." Dkt 45 (Reply) at 6. But most of the specification passages Defendants string cite are irrelevant. For example, Defendants cite discussion of the Fig. 7 and Fig. 18 embodiments. *See id.* at 6 (citing DX 2 ('259) at 9:15-17, 9:22-44, 16:59-62, 16:66-17:5, 17:6-8, 17:32-34). But those embodiments are immaterial because they show the sequential transmission of the claimed feedback frames, while Claims 1 and 18 require parallel transmission. Defendants also cite a passage that does not even mention the feedback frame. *See id.* at 6 (citing DX 2 ('259) at 18:7-10 (discussing the NDP and NDPA frames)).

The only specification passages Defendants cite with any relevance support Plaintiffs. Namely, Defendants cite the discussion of the Fig. 19 and 20 embodiments, Reply at 6 (citing DX 2 ('259) at 18:35-38, 18:55-57), which are the same except that in Fig. 19 the feedback frames are transmitted sequentially, while in Fig. 20 they are transmitted in parallel. *See* DX 2 ('259) at Fig. 19, Fig. 20. Focusing on Fig. 20, that figure (like Claims 1 and 18) discloses beamformee devices that receive an NDPA frame and an NDP frame. *Id.* at Fig. 20. It also discloses that the receiving devices, after receiving the NDP frame, transmit feedback or compressed beamforming ("CB") frames that, "in some embodiments," include "subchannel information," as claimed in Claims 1 and 18. *Id.* at Fig. 20, 18:35-54. But it has intervening steps: the transmission/reception of subchannel information frames and channel feedback trigger frames. *Id.* at Fig. 20. And it shows

the transmission of the CB feedback frames occurs more than one SIFS after receiving the NDP frame. *Id.* at Fig. 20. Defendants’ narrow construction thus would impermissibly exclude the Fig. 20 embodiment by requiring the feedback frame be transmitted “in response to and one SIFS” after the NDP frame.

Defendants’ proposed construction, in fact, would read an entire claim out of the ’259 Patent. Claim 12, which depends on Claim 1, recites transmitting a subchannel information frame after receipt of the NDP frame but before the claimed feedback frame. *See* DX 2 (’259) at 23:32-43. By requiring the feedback frame to be transmitted “in response to” the NDP frame, Defendants’ construction would render Claim 12 a nullity and must be rejected. *See CytoLogix Corp. v. Ventana Med. Sys., Inc.*, 424 F.3d 1168, 1173 (Fed. Cir. 2005) (“An interpretation of one claim that renders another claim meaningless is disfavored.”).

Defendants also contend that Atlas’s arguments concerning Fig. 20 “relate[] to non-infringement” and “implicitly beg[] the Court” to adopt their construction to prevent “expand[ing] the claim scope to cover any feedback frame transmitted/received” after the NDP frame. Dkt. 45 (Reply) at 6. But it is the claims that require the feedback frame to be transmitted/received “after” the NDPA frame. Atlas does not try to expand them; Defendants impermissibly try to narrow them.

Finally, Defendants seem to contend that the compressed beamforming or “CB” frames in Fig. 20 are not feedback frames. *See* Dkt. 45 (Reply) at 7. If Defendants make that argument, it ignores that the specification explicitly discloses “the feedback frame may be a compressed beamforming (CB) frame,” DX 2 (’259) at 9:22-24, and that Defendants concede that CB frames in other figures (*e.g.*, Fig. 7) are feedback frames.¹

¹ Defendants assert that Atlas seeks to construe a “feedback frame” as a “compressed beamforming frame.” Dkt 45 (Reply) at 5, 7. Atlas seeks no such thing.

2. “Wherein the NDPA frame indicates information corresponding to the predetermined length” (claim 6)

Atlas’s Construction	Defendants’ Construction
Plain and ordinary meaning	Indefinite

In Reply, Defendants pivot from their indefiniteness position and attempt to limit the claims to a preferred embodiment. Dkt. 45 (Reply) at 8-9. But the specification is clear that an NDPA frame including information on the maximum CB length is just “one embodiment” and an “example.” DX 2 (’259) at 15:43-47. Limiting the claims to a preferred embodiment is legal error. *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004). For the reasons presented in Atlas’ Response brief (Dkt. 42 at 11-13), these terms are not indefinite, and the Court should adopt Atlas’ “plain and ordinary meaning” construction as several courts have done before.²

C. U.S. Patent No. 9,825,738

1. “Transmitting The Downlink Data And The Uplink Setup Information In A Single Physical Downlink Frame To A Plurality Of Stations” (Claim 1) / “The Physical Downlink Frame Comprising: Uplink Setup Information Including A First Information To Be Used For Uplink Multi-User Transmission By The Station, And Downlink Data” (Claim 9)

Atlas’s Construction	Defendants’ Construction
Plain and ordinary meaning	“transmitting the downlink data and the uplink setup information in a single physical downlink frame to a plurality of stations, wherein the uplink setup information is that which would otherwise be in an uplink setup or uplink initiation (ULI) frame, and the downlink data is data other than the uplink setup information” (claim 1) “the physical downlink frame comprising: uplink setup information including a first information to be used for uplink multi-user transmission by the station, and downlink data, wherein the uplink setup information is that which would otherwise be in an uplink setup or uplink initiation (ULI) frame, and the downlink data is data other than the uplink setup” (claim 9)

² As explained in Section II.B.1 above, Defendants’ argument that Atlas asks the Court to construe “feedback frame” is Defendants’ own invention and should be ignored. Dkt. 45 (Reply) at 8.

This Court previously ruled that Defendants’ construction is confusing and unsupported by intrinsic evidence. Ex Z (*OnePlus* CC Order) at 24-26. Defendants’ Reply does not respond to the many problems that Atlas identified regarding the confusing construction that Defendants proposed originally. Dkt. 42 (Response) at 14-15. Instead, Defendants now seek an entirely new construction for “uplink setup information” based on Atlas’s expert’s identification of the pertinent claim passages that provide context for this term. Dkt. 45 (Reply) at 9-10. This Court previously rejected a similar proposed alternative construction from the *Sercomm* defendant, and construed “uplink setup information” according to its plain-and-ordinary meaning, based at least in part on the detailed context provided in the ’738 claims regarding the requirements of “uplink setup information.” See PX E (*Sercomm-ASUS* CC Order) at 33-34; see also PX F (*TP-Link* CC Order) at 31-32 (same construction in EDTX). Defendants do not explain how their paraphrasing improves or clarifies the claim language, or why the Court should modify its prior rulings.

2. “The Second Information Is A Function Of A Total Number Of Space Time Streams To Be Used To Transmit The Multiple Uplink Frames” (Claim 1) / “The Second Information Is A Function Of A Total Number Of Space Time Streams To Be Used To Perform The Simultaneous Transmission Of The Uplink Frame And The One Or More Uplink Frames From The One Or More Other Stations” (Claim 9)

Atlas’s Construction	Defendants’ Construction
Plain and ordinary meaning Alternatively, “the second information in the common information portion is a value that is related to the total number of space time streams to be used to transmit the multiple uplink frames” (claim 1) / “the second information in the common information portion is a value that depends on the total number of space time streams to be used to simultaneously transmit the multiple uplink frames” (claim 9)	Indefinite

Defendants continue to press for an indefiniteness ruling because the term “function” is broad. Dkt. 45 (Reply) at 10-11. This Court ruled previously that “function” is well understood by skilled artisans and its is not indefinite merely because it is broad. PX E (*Sercomm-ASUS* CC

Order) at 30-31. As the Court noted, “[b]readth is not indefiniteness.” *Id.* (citing *BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360, 1367 (Fed. Cir. 2017)). Defendants have not met their clear and convincing burden.

Contrary to Defendants’ argument, the ’738 claims and specification describe that “second information” is a dependent variable and “total number of space time streams” is an independent variable. Specifically, the specification describes that the number of long training fields (HEW-LTFs) has a value that depends on the total number of space time streams, and even provides a mapping of the relationship between those variables. DX 3 (’738) at 22:17-30; 17:39-53.

D. U.S. Patent No. 9,848,442

1. “A Mode That Is High Efficiency” / “A Mode Of A Standard Previous To A Standard Defining The High Efficiency Mode” (Claims 1, 8)

Atlas’s Construction	Defendants’ Construction
“a mode specified as High Efficiency (HE) by an 802.11 Standard or proposed 802.11 Standard” / “a legacy mode specified in a IEEE 802.11 Standard released prior to 802.11ax standard or proposed standard (e.g., non-HT, HT, VHT)	Indefinite

Neither Defendants nor their expert dispute that “HE” and “High Efficiency” have a generally understood meaning in the context of 802.11 and Wi-Fi systems. Dkt 45 (Reply) at 11-13. Nor do Defendants contest the specification defines “HE” as associated with 802.11ax (and “legacy” as everything before 802.11ax). *Id.* Faced with this, Defendants seek to distort the ’442 claims beyond any reasonable interpretation by arguing they are not limited to Wi-Fi systems. *Id.* That argument contradicts the claims, specification, provisional application, and unrebutted expert testimony.

It is black-letter law that a claim need not cover every embodiment disclosed in the specification, especially “when the claim language is clearly limited to one or more embodiments.”

TIP Sys., LLC v. Phillips & Brooks/Gladwin, Inc., 529 F.3d 1364, 1375 (Fed. Cir. 2008). Here, the ’442 claims themselves expressly require “a mode that is High Efficiency” and are clearly limited to Wi-Fi. “High Efficiency” is a proper noun expressly defined in the specification; every reference to “HE” in the specification ties HE/High Efficiency directly to the 802.11 standard. For example, the specification states “a PHY header (e.g., a preamble) of a frame defined in the IEEE 802.11ax (hereinafter, referred to as ‘11ax frame’ or ‘HE frame.’).” DX 4 (’442) at 12:11-16. The specification also describes one type of frame as “a HE frame (11ax frame).” *Id.* at 12:45-48; *see also id.* at 8:6-13 (“a PPDU specified in the IEEE 802.11ax (i.e., 11ax PPDU”).

Similarly, the specification makes clear the word “legacy” (which Defendants do not mention in either brief) is also tied to the 802.11 standard. It defines a legacy PPDU as “a PPDU specified by versions earlier than IEEE 802.11ax.” DX 4 (’442) at 8:21-28. The specification also provides an enumerated list of legacy PPDUs, all of which are PPDUs defined by versions of the 802.11 standard. *See id.* at 12:19-22; 12:45-48. The provisional application even begins its “Background & Problem Statement” section with a sub-heading titled “Carrier sensing in 802.11.” PX N (’442 Provisional) at ATLAS-00014124.

All the intrinsic discussion of HE/High Efficiency relates to 802.11. Now compare this evidence to the Reply, which never addresses *any* of the specification passages discussing “HE” or 802.11ax. *See* Dkt. 45 (Reply) at 11-13. Instead, Defendants cite the boilerplate sentence at the end of the specification to argue the ’442 claims are not limited to Wi-Fi. *See id.* at 12 (citing ’442 at 15:29-32). That one catch-all does not outweigh every other intrinsic teaching.

Defendants do not dispute that HE and High Efficiency have well understood meanings in the industry. Both the provisional application and specification refer to the 802.11ax standard, which was developed by the “High Efficiency WLAN” study group. PX N (’442 Provisional) at

ATLAS-00014123; DX 4 ('442) at 1:52-55. The IEEE's press release announcing the formation of the Study Group called it the "High Efficiency WLAN Study Group." PX O (IEEE Press Release). As Atlas explained in its opening brief, Newracom was heavily involved in developing the 802.11ax standard, and its inventors would have readily understood the meaning of "High Efficiency." *See* Dkt. 42 (Response) at 19-20. Atlas also provided expert testimony from Dr. Shoemake that a skilled artisan would readily understand these terms. Dkt. 42-1 (Shoemake Dec.), ¶¶68-73. As Dr. Shoemake explained, 802.11ax "introduced a new physical layer protocol data unit (PPDU), the HE PPDU," and a skilled artisan would understand that "a mode that is High Efficiency" refers to an HE PPDU. *Id.* at ¶71.

Defendants also re-raise the argument that "High Efficiency" is a term of degree (Reply at 13), but the specification explicitly rejects this argument by defining HE frames and legacy frames in conjunction with the 802.11 standard. *See* DX 4 ('442) at 12:11-22. A POSITA understands these terms with reasonable certainty.

These terms have twice been construed as per Atlas's constructions. PX E (*Sercomm-ASUS* CC Order) at 39-45; PX Z (*OnePlus* CC Order) at 31-32. The Court should do so again here.

2. **"When The BSS Of The First PPDU Is The BSS To Which The First Station Does Not Belong, A Received Signal Strength Of The First PPDU Is Higher Than A First Threshold, And The First PPDU Is A Frame Having A Mode That Is High Efficiency And Having A PHY Header That Includes Duration Information For Setting A Virtual Carrier Sensing, Setting A PHY-Level Virtual Carrier Sensing ... ; When . . . The Received Signal Strength Of The First PPDU Is Higher Than The First Threshold, The First PPDU Is A Frame Having A Mode Of A Standard Previous To A Standard Defining The High Efficiency Mode, And The First PPDU Is A Frame Having A PHY Header That Does Not Include Duration Information For Setting The Virtual Carrier Sensing, ...; And When . . . The Received Signal Strength Of The First PPDU Is Lower Than The First Threshold ..."** (Claims 1, 8)

Atlas's Construction	Defendants' Construction
Plain and ordinary meaning	Indefinite If not indefinite, the Court must determine whether only one of

	the claimed steps with mutually exclusive conditions, or all three of the claimed steps with mutually exclusive conditions, are required to occur for purposes of meeting the claim limitations.
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Defendants mischaracterize Atlas's position as "direct infringement of the method claim hinges on the 'capability' of the system to perform the method." Dkt. 45 (Reply) at 15. That is incomplete. The Federal Circuit addressed this scenario in *Lincoln Nat'l Life Ins. v. Transamerica Life Ins.*, 609 F.3d 1364 (Fed. Cir. 2010), which Atlas discussed in its Response brief (at 23). In that case, the defendant practiced one scenario of a conditional method claim but was incapable of performing the other conditional scenario. *Id.* at 1370. The court held that this was insufficient to prove infringement. *Id.*

As Atlas explained in its Response brief, the '442 Patent contemplates three scenarios: (1) setting a PHY-level virtual carrier sensing; (2) setting a MAC-level virtual carrier sensing; or (3) attempting to obtain a transmission opportunity. Dkt. 42 (Response) at 22. Because these three scenarios are mutually exclusive, only one can occur at a time. *Lincoln* is instructive here. To infringe method claim 1 of the '442 Patent, a device must actually perform one of the three contemplated scenarios **and** be capable of performing the other two.

Regarding validity, Defendants make no attempt to distinguish *Hytera Comms. Co. v. Motorola Sols., Inc.*, 841 F. App'x 210, at *215-16 (Fed. Cir. 2021) (citing *Lincoln*). In order to invalidate a method claim with conditional limitations, "the prior art must teach each step of the claim, **including the response to each condition**...." *Id.* at *218 (emphasis added). In the context of the '442 Patent, the prior art must teach the response to each condition set forth in claim 1. The Reply does not even mention (must less distinguish) *Hytera*. Dkt. 45 (Reply) at 15-16. Instead, Defendants cite a case for the unremarkable proposition that claims should be given the same construction for infringement and validity. *See Amazon.com, Inc. v. Barnesandnoble.com, Inc.*,

239 F.3d 1343, 1351 (Fed. Cir. 2001).

Finally, Defendants focus their entire argument on method claim 1, essentially ignoring system claim 8. But there is a different body of law addressing method and system claims. For system claims with conditional limitations, the accused system must be capable of addressing each alternative. *See Interdigital Tech. Corp. v. Lenovo Holding Co.*, 2021 U.S. Dist. LEXIS 88682, at *15-16 (D. Del. May 10, 2021); *Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson*, 2022 U.S. Dist. LEXIS 46812, at *114 (E.D. Tex. Mar. 16, 2022) (citing *Interdigital*). Even if the Court finds method claim 1 indefinite, Defendants have not presented any argument or evidence that system claim 8 is also indefinite.

Atlas's proposed construction has been adopted twice. PX E (*Sercomm-ASUS* CC Order) at 45-49; PX Z (*OnePlus* CC Order) at 32-33. The Court should do so again here.

E. U.S. Patent No. 9,912,513

1. "Wherein at least a portion of the payload of the uplink frame is associated with the first guard interval length" (claim 1) / "wherein at least a portion of the payload of the uplink frame is associated with the first CP length" (claim 9) / "wherein at least a portion of the legacy header is associated with a second CP length" (claim 10) / "wherein at least a portion of the respective non-legacy header is associated with the first guard interval" (claim 16)

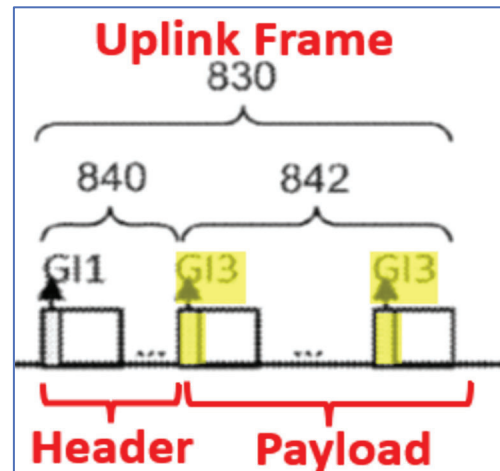
Atlas's Construction	Defendants' Construction
Plain and ordinary meaning	Indefinite

Defendants first criticize the length of Atlas's response brief regarding these terms. Dkt. 45 (Reply) at 16. But Atlas's brief follows the *Phillips* claim construction framework and explains why each of the claims, specification, and extrinsic evidence support Atlas's construction. Dkt. 42 (Response) at 25-30. Atlas should not be blamed for following the Federal Circuit's preferred approach, which produces an overwhelming volume of evidence in its favor.

Second, Defendants accuse Atlas of rewriting the claims. Dkt. 45 (Reply) at 16. But Atlas

advocates that no construction is needed beyond “plain and ordinary meaning” and the Court can resolve the Parties’ dispute by simply ruling the terms are not indefinite. So how can it be said that Atlas has rewritten the claims? Defendants’ position makes no sense.

Third, Defendants allege the specification and Figure 8 “provides no insight” into (1) what the relevant portion of the payload of the uplink frame might be or (2) how that relevant portion is associated with a guard interval. Dkt. 45 (Reply) at 16. Not true. With regard to Figure 8, the specification clearly states: “The participating stations use the guard interval duration GI3 indicated by the downlink frame 810 for UL OFDMA transmission for the second [payload] part of their respective uplink frames 830 and 850.” DX 5 (’513) at 17:34-37 (emphasis added), Fig. 8. Thus, the specification explains (1) the claimed “portion” includes the uplink payload symbols that are preceded by the guard interval GI3 (highlighted yellow in the figure to the right) and (2) the claimed “association” comes from the fact that those symbols use the same guard interval GI3 indicated by the prior downlink frame. Dkt. 42-1 (Shoemaker Dec.), ¶85.



Fourth, Defendants point to the same cases and regurgitate the same legal arguments from their opening brief. Dkt. 45 (Reply) at 16-17. But Atlas already explained why those cases are distinguishable and the legal arguments fail. Dkt. 42 (Response) at 28-29. The Reply adds nothing.

Finally, in the related *OnePlus* case, this Court recently adopted Atlas’s construction for these terms. PX Z (*OnePlus* CC Order) at 33-35. That marks the third time that a court has rejected Defendants’ indefiniteness position. *Id.*; see also PX E (*Sercomm-ASUS* CC Order) at 50-55; PX F (*TP-Link* CC Order) at 35-40.

F. U.S. Patent No. 10,020,919**1. “Determining Exactly A Number Of The One Or More Station Information Fields In The NDPA....” and related elements (Claims 1, 2, 8, 11, 12, 19)**

Atlas’s Construction	Defendants’ Modified Construction
Plain and ordinary meaning.	~~Indefinite. If not indefinite, the claims should be construed as set forth below.~~ Claim 1: determining an exact value of a number of <u>the</u> one or more station information fields in the NDPA; in response to (i) determining that the value of the number is one, which indicates that there is only one station information field in the NDPA and (ii) receiving the NDP, transmitting first Channel State Information (CSI) feedback ~~to an access point~~ Claim 2: when the value of the number is two or more, which indicates that there are two or more station information fields in the NDPA, ... transmitting the first CSI feedback ~~to the access point~~ in response to receiving the first trigger frame Claim 8: when the value of the number is two or more, which indicates that there are two or more station information fields in the NDPA, ... transmitting second CSI feedback ~~to the access point~~ in response to receiving the second trigger frame Claim 11: when a station determines that the value of a number of the one or more station information fields is one, which indicates that there is only one station information field in the NDPA, receiving first Channel State Information (CSI) feedback transmitted in response to the NDP having only one station information field Claim 12: when the station determines that the value of the number is two or more, which indicates that there are two or more station information fields in the NDPA, ... receiving the first CSI feedback in response to transmitting the first trigger frame Claim 19: when the station determines that the value of the number is two or more, which indicates that there are two or more station information fields in the NDPA, ... receiving second CSI feedback in response to transmitting the second trigger frame <u>If not construed as above, the claims are indefinite.</u>

In Reply, Defendants merely reassert their position that the claims are “nonsensical.” Dkt. 45 (Reply) at 19. This argument is based on Defendants’ theory that there can be only one station information field in the NDPA recited in claims 1 and 11. The Court has already rejected this same

argument in the *OnePlus* case. PX Z (*OnePlus* CC Order) at 42; *see also* PX E (*Sercomm-ASUS* CC Order) at 61-67 (rejecting similar arguments).

As Atlas explained: in the independent claims, if there is one station information field in the NDPA, the STA transmits or the AP receives feedback after an NDP. Dkt. 42 (Response) at 31-33. And if there is more than one station information field in the NDPA, the STA may take any action or inaction. *Id.* The dependent claims add that, when there is more than one station information field, infringement requires that feedback is sent or received in response to a trigger frame. *Id.* at 33.

Moreover, Defendants’ modified construction retains the ambiguous “value” language, but Defendant’s Reply does not address the issues caused by that proposed construction. *See* Dkt. 42 (Response) at 35. Defendants’ construction should be rejected.

2. “Wherein the number of the one or more station information fields in the NDPA is the cardinality of the one or more station information fields in the NDPA” (claims 1, 11)

Atlas’s Construction	Defendants’ Construction
Plain and ordinary meaning Alternatively, “wherein the number of the one or more station information fields in the NDPA is the number of elements in the set of station information fields”	plain meaning: wherein the number of the one or more station information fields in the NDPA is the number of the one or more station information fields in the NDPA. This plain meaning renders the claims indefinite.

Defendants’ arguments as to the ambiguity and “scope” of this term rely primarily on the notion that there can only be one station information field in the NDPA in claims 1 and 11. Dkt 45 (Reply) at 20. Again, the Court has already rejected this argument in the *OnePlus* case and should do so again here. PX Z (*OnePlus* CC Order) at 43-45; *see also* PX E (*Sercomm-ASUS* CC Order) at 67-68 (rejecting similar arguments).

Defendants also argue that Plaintiff’s construction should be rejected because it “fails to address how ‘a set or group’ could include ‘one’ or a singular station information field....” Dkt.

45 (Reply) at 20. But Defendants’ arguments ignore the patentee’s explanation of this term during prosecution. Moreover, it is axiomatic that, at least in mathematical terms, a “set” can include only one entry. *See* PX AA (Stoll) at 5 (“unit set is the set whose sole member is x”) (emphasis added). This Court should reject Defendants’ arguments.

G. U.S. Patent No. 10,756,851

1. “Scheduling extension” (claims 1, 2, 7, 8)

Atlas’s Construction	Defendants’ Construction
Plain and ordinary meaning: “an extension to the control field that includes scheduling information”	“an extension appended to the control field that is dedicated to including scheduling information”

Defendants originally argued this term was subject to “prosecution history estoppel,” but their Reply brief no longer makes this argument. Defendants now contend the patentee “disavow[ed] the full scope of the claim term during prosecution” or the patentee’s claim amendment during prosecution constitutes “lexicography.” Dkt. 45 (Reply) at 21. Defendants are unclear about whether they are arguing disclaimer or lexicography (or some combination of both); but regardless, these new arguments raised for the first time in the Reply brief are waived. *Jones v. Cain*, 600 F.3d 527, 541 (5th Cir. 2010) (“Arguments raised for the first time in a reply brief are generally waived.”); PX E (*Sercomm-ASUS* CC Order) at 73 (“Defendants raised this argument for the first time in their reply brief. As such, it is waived.”). Moreover, Defendants do not specifically identify which statements constitute the alleged disclaimer or lexicography.

This Court has already considered this same argument regarding this same claim term and found that the patentee’s statements in the March 25, 2020 Amendment do not constitute disclaimer. PX E (*Sercomm-ASUS* CC Order) at 74 (“Rather than being a disclaimer, the description in this passage merely describes examples, which is made clear by the passage’s use of language such as ‘[b]y way of illustration, but not limiting the scope of the claims’ and ‘e.g.’

Based on that, the Court concludes that Applicant did not make a prosecution disclaimer.”). Both disclaimer and lexicography require the patentee to express a clear and unmistakable intent to limit the scope of the claims, and no such expressions of intent are present in this prosecution history.

Even if there was a disclaimer or lexicography (there is not), Defendants do not explain how it would support their proposed claim construction. The words “appended to” and “dedicated to” do not appear in the March 25, 2020 Amendment (DX 7A), and in fact these concepts do not appear **anywhere** in the intrinsic record in connection with this claim term. Accordingly, there is no basis to adopt a construction that includes the phrases “appended to” and “dedicated to.” When these extraneous phrases are removed, what remains is Atlas’ proposed construction.

III. CONCLUSION

For the foregoing reasons, the Court should adopt Atlas’s constructions.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 30, 2023, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system.

/s/Eric Enger

Eric Enger