

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

STARZ ENTERTAINMENT, LLC, et al.,
-----Plaintiffs,
vs.
VL COLLECTIVE IP, LLC, et al.,
-----Defendants.)

Case No.
21-1448-JLH

TRANSCRIPT OF MARKMAN HEARING

MARKMAN HEARING had before the Honorable
Jennifer L. Hall, U.S.M.J., via Zoom on the
16th of December, 2022.

APPEARANCES

RICHARDS, LAYTON & FINGER, P.A.
BY: KELLY E. FARNAN, ESQ.

-and-

VENABLE LLP
BY: MANNY CAIXEIRO, ESQ.
ERIC HARMON, ESQ.

Counsel for Plaintiff

(Appearances continued.)

FARNAN LLP

BY: BRIAN FARNAN, ESQ.

-and-

REICHMAN JORGENSEN LEHMAN & FELDBERG LLP

BY: JAIME CARDENAS-NAVIA, ESQ.

MICHAEL MATULEWICZ-CROWLEY,
ESQ.

CHRISTINE LEHMAN, ESQ.

TAYLOR MAUZE, ESQ.

WESLEY WHITE, ESQ.

Counsel for Defendants

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna, Delaware 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

1 THE COURT: Good morning, everybody.

2 MS. FARNAN: Good morning, Your
3 Honor.

4 MR. FARNAN: Good morning, Your
5 Honor.

6 THE COURT: We're here today for a
7 Markman hearing. This is *Starz Entertainment,*
8 *et al., versus VL Collective IP LLC, et al.*
9 It's Civil Action Number 21-1448-JLH. We're
10 here in a videoconference today. We have a
11 court reporter logged in. The court reporter
12 is Deanna Warner.

13 May I please have appearances for
14 Plaintiffs, starting with Delaware counsel.

15 MS. FARNAN: Yes, good morning, Your
16 Honor. Kelly Farnan from Richards, Layton, and
17 Finger on behalf of the plaintiff. I'm joined
18 by my co-counsel from Venable Manny Caixeiro
19 and Eric Harmon. And also just wanted to alert
20 Your Honor Mr. Harmon is going to handle some
21 of the terms today. He's a junior associate
22 but has been substantially involved in the
23 briefing. So just wanted to make Your Honor
24 aware of that.

25 THE COURT: Very good. Thank you

1 very much. Welcome, everybody.

2 And could we have appearances, please,
3 for Defendants, starting with Delaware counsel.

4 MR. FARNAN: Good morning, Your
5 Honor. Brian Farnan on behalf of the
6 defendants, and with me is Christine Lehman,
7 Wesley White, Jaime Cardenas-Navia, Michael
8 Matulewicz-Crowley, and Taylor Mauze from
9 Reichman, Jorgensen, Lehman, and Feldberg.

10 THE COURT: Great. Good afternoon to
11 all of you.

12 I can tell you ahead of time that we
13 haven't looked at the slides. I understand
14 that there were some sets of slides submitted.
15 We'll look at them if you present them during
16 the hearing today. We don't generally look at
17 them beforehand, and we don't usually look at
18 them after, but we'll pay attention to whatever
19 you have to say during the hearing.

20 I believe we allocated two hours for the
21 hearing. I do have a lot of questions, so if
22 we go a little bit over, that's okay too. I
23 can tell you we've read the patents very
24 carefully. We've looked at the briefing.
25 We've read the cases cited. I think we have a

1 good understanding as to what each side's
2 position is from the briefing, but we look
3 forward to putting a final point on it today.

4 Normally, we would have the patentee go
5 first, but it looks to me that's not the way it
6 was briefed. Have the parties discussed how we
7 should proceed in terms of who should go first?

8 MR. CAIXEIRO: Your Honor, this is
9 Manny Caixeiro the plaintiff. We haven't had
10 that discussion. I would note, as you noted,
11 the briefing went with the plaintiff going
12 first, and we intended to go first, but we can
13 certainly be flexible.

14 THE COURT: Any objection to that
15 plan from defendants?

16 MS. LEHMAN: No objection, Your
17 Honor.

18 THE COURT: Great. Mr. Caixeiro, go
19 ahead when you're ready.

20 MR. CAIXEIRO: May I ask one
21 housekeeping question, which is as we work
22 through slides, would you prefer, Your Honor,
23 that we share our screen and show you those
24 slides on the screen, or would you rather be
25 looking at my beautiful face?

1 THE COURT: I would prefer -- I think
2 I get to see them both if you set it up the
3 right way, but totally up to you. I would
4 prefer you to show me which slide you're
5 looking at as we go.

6 MR. CAIXEIRO: Great. I'll ask
7 Mr. Harmon to please pull up our slide desk.

8 Can you see that okay, Your Honor?

9 THE COURT: Yes.

10 MR. CAIXEIRO: Okay. Great. So we
11 are going to start -- can you jump to slide
12 three, please.

13 The first claim we'll be discussing is
14 from the '790 patent, and that is "wireless
15 communication devices" and "wireless devices."
16 Now, the '790 patent, Your Honor, concerns a
17 system with certain features that manage the
18 publication, purchase, and delivery of digital
19 products to wireless services subscribers, and
20 the claims use phrases like "wireless
21 communication devices used by a plurality of
22 wireless services subscribers." So the first
23 question today is what is a "wireless
24 communication device" or "wireless device"
25 within the meaning of this patent. Luckily,

1 the patent told us the meaning in the
2 specification.

3 If you go to the next slide, Eric.

4 This is the express definition we see in
5 the specification, and it says, "Personal
6 mobile communication and computing devices,
7 such as cellular telephones, personal digital
8 assistants (PDAs), and two-way pagers. . .are
9 referred to collectively herein as 'mobile
10 devices' or 'wireless devices.'" And I may
11 make a few more points on this, but one initial
12 point is remember, we're looking at this
13 question in the 2002 to 2003 time period. And
14 I mention that because in 2023, I have a
15 thermostat that might be considered a wireless
16 device, and that certainly was not on anybody's
17 radar in 2002 and 2003 and certainly was not
18 expressly defined here. And where there's an
19 express definition like this, the inventor's
20 lexicography governs.

21 If we go to the next slide, please, Eric.

22 The caselaw supports using express
23 definition. Per the *Sinorgchem* case, there's
24 the use of quotation marks, and there's an
25 "are," an active "is" verb. There's a

1 quotation. All of which, in Starz' view,
2 clearly expresses an intent for that definition
3 to be accepted, and that is the standard here.

4 Now, videoLabs' position and in its
5 opposition focuses on a very different
6 question, a question of disavowal. But
7 disavowal is a different concept than
8 lexicography. It's the difference between
9 saying "the term will mean X" as opposed to "I
10 am excluding Y from the term."

11 Nor is this a situation where Starz is
12 pulling an embodiment and reading the
13 embodiment into the claims. All Starz is doing
14 here is taking the express definition set forth
15 in the specification from the term and asking
16 for it to be applied.

17 If you move to the next slide, please,
18 Eric.

19 Now, it is noteworthy that there are
20 other parts of intrinsic evidence that are very
21 consistent with this express definition, and we
22 can start just with the title. The title
23 refers to "Device Capability Based Discovery,
24 Packaging, and provisioning of Content for
25 Wireless Mobile Devices." And that's

1 consistent with the way "wireless devices" is
2 defined in this patent as opposed to "mobile
3 devices."

4 If we go to the next slide, again, these
5 are other examples from the specification.
6 First, in the first bullet point is a provision
7 in the specification where the patentee
8 discusses the context of the invention, and it
9 says, "There's increasing demand for new and
10 interesting types of digital content that can
11 be used on these mobile devices."

12 And the next three bullet points talk
13 about problems that the invention seeks to
14 solve, and they include that different mobile
15 devices often require different content
16 packaging formats and provisioning protocols
17 and it's difficult to keep up with constant
18 changes in device capabilities in many mobile
19 devices, and there's a problem how to
20 distribute digital content to subscribers using
21 many types of mobile devices. Once, again, all
22 consistent with the express definition.

23 Moving to the next slide, I won't belabor
24 the point, but suffice to say there are
25 specific types of mobile devices referenced in

1 the patent, like Nokia phones, Sprint phones,
2 and no non-mobile devices are referenced in the
3 patent.

4 Can we turn to the next slide, please,
5 Eric.

6 Now, VideoLabs's argument is founded on
7 what we think is generic language. For
8 instance, there's a block quote here. If you
9 ignore for just a moment the underlined part,
10 there's a quote that says, "Note, however, the
11 techniques described herein need not be limited
12 to wireless services subscribers or mobile
13 client devices." And that's what VideoLabs
14 focuses its argument, but in the preceding
15 sentences, the specification equates mobile
16 devices and subscribers of wireless services,
17 which, again, consistent with the express
18 definition.

19 And as to that subsequent sentence, the
20 "note however" sentence, the relevant question
21 for today is what does "wireless device" mean,
22 not whether there are other kinds of devices,
23 non-wireless devices, that might be able to
24 perform these techniques. That's an
25 infringement question. That is not a claim

1 construction question.

2 If you go to the next slide, again, a
3 very similar excerpt where VideoLabs is going
4 to focus on language saying that these
5 techniques can be practiced, with modification
6 and alteration, by other kinds of embodiments.
7 Once again, that's really not answering the
8 question for today, which is what is a wireless
9 device, not whether this invention can be
10 modified and altered so that different types of
11 devices that are not wireless devices can
12 perform it. Again, that's an infringement
13 question.

14 With that, Your Honor, and the points we
15 make in the brief, I'm happy to answer any
16 questions or pass to my colleagues on the other
17 side.

18 THE COURT: No questions about this
19 one. Thank you very much. Let's hear from the
20 patentee.

21 I think we have you on mute.

22 MS. MAUZE: Good morning, Your Honor.
23 This is Taylor Mauze for VideoLabs. Thank you
24 for that reminder to unmute, and I have shared
25 my screen, if you will confirm whether or not

1 you can see it.

2 THE COURT: Yes, I can see it.

3 MS. MAUZE: Well, then, if we can
4 start -- and I had some background in here, but
5 I think, frankly, Your Honor, that opposing
6 counsel did a good job explaining what the
7 parties are disputing, so I'll go ahead and
8 start on slide 10.

9 We are talking about the term "wireless
10 communication devices" or "wireless device."
11 The parties agree that these terms have the
12 same meaning. I'll talk in a second about how
13 Starz seems to be trying to conflate "mobile
14 devices" with "wireless devices." We agree
15 that we are construing "wireless communication
16 devices", not "mobile devices," and I'll get
17 into in a second several of the reasons that
18 that changes the support that Starz offers for
19 this term.

20 First and foremost, I'd like to say
21 "wireless communication devices" and "wireless
22 devices" have a plain and ordinary meaning.
23 Frankly, these terms are more understandable to
24 a fact-finder than either of the party's
25 proposals, so there's no construction

1 necessary.

2 Should Your Honor decide to construe the
3 terms, VideoLabs has proposed a construction
4 that we believe is the full scope of "wireless
5 communication device," and that it -- and Starz
6 has offered no reason that this should be
7 narrowed. In fact, Starz's only argument is
8 really that VideoLabs has acted as
9 lexicographer with respect to this statement,
10 and that just isn't the case, and I'll explain
11 why with reference to this, our slide 12, which
12 is the portion of the specification that Starz
13 points to as lexicographic.

14 And, Your Honor, I think there's a lot in
15 this statement, so perhaps to unpack it, if
16 you'll permit me the opportunity to divide it,
17 and I'll create sort of a nomenclature so we
18 know what we're talking to at the same time.
19 Starz is pointing to these five lines as
20 lexicographic of "wireless devices," and the
21 first portion of the five lines that recites
22 "personal mobile communication or computing
23 devices" I'm going to go ahead and refer to as
24 the PMC term. In shorthand, the second portion
25 of this recitation, which recites "such as

1 cellular telephones, personal digital
2 assistants (PDAs), and two-way pagers" I'll
3 refer to as the exemplary devices list. The
4 parties don't dispute this phrase has become
5 commonplace in many countries, so I don't think
6 we don't need a shorthand to talk about that.

7 And the final portion of this recitation
8 is "These devices are referred to collectively
9 herein as mobile devices or wireless devices."
10 I'm going to refer to that as the collective
11 term. Certainly, if these terms get confusing,
12 please stop me and let me know.

13 But I think that Starz is really alleging
14 that the final term in this, what I'm calling
15 the term the collective term in this
16 recitation, is the lexicography, and that's
17 simply not the case. What this statement does
18 is not define "wireless devices," the term that
19 you're recall we're construing here. What it
20 actually does is give a shorthand for reference
21 throughout the patent such that when the patent
22 goes on to talk about these devices, it doesn't
23 have to recite them over and over and over
24 again. It's really a shorthand or akin to
25 something like an acronym.

1 So this collective terms isn't really
2 lexicographic at all. What it's really doing
3 is providing a shorthand. And what it's
4 providing a shorthand for is actually the PMC
5 term at this beginning of this definition, at
6 the beginning of this portion of the
7 specification. And, Your Honor, that's very
8 important because if anything is definitional
9 here, it's definitional of the personal mobile
10 communication and computing devices, not of the
11 wireless devices. The collective term at the
12 end of this portion states that the personal
13 mobile communication or computing devices
14 collectively include mobile devices and
15 wireless device. Nothing in this portion of
16 specification actually defines what a wireless
17 device is, is not, can be, can't be, the
18 functionality of it, or anything like that.
19 There's simply nothing in this statement that
20 defines any requirement of a wireless device.

21 And the final portion of this
22 specification in my nomenclature was what I
23 call the exemplary devices list, the "such as
24 cellular phones, PDAs, and two-way pagers," and
25 I think I hear Starz to concede this point,

1 frankly, but this statement cannot be
2 lexicographic of anything because, as Your
3 Honor is fully aware, embodiments, specified
4 embodiments, cannot be limiting when they're
5 given as exemplary, and this "such as" language
6 is exemplary language of of exemplary devices,
7 and, once again, the examples of those devices
8 are actually examples of the PMC term or
9 personal mobile communication computing
10 devices.

11 Your Honor, I want to briefly discuss
12 that Starz and I -- Starz and VideoLabs agree
13 that the question is a "wireless communications
14 device." Starz, on their slide, gave you lots
15 of definitions of a mobile device, and I wish I
16 could bring up their slide, frankly, but I will
17 go ahead and stop my share.

18 Starz's citations to mobile devices are
19 not at odds with VideoLabs's proposals.
20 Starz's citations to mobile devices are talking
21 about mobile devices, which, as you recall in
22 the definitions, is a different category of
23 devices. The patent also uses the term that
24 we're actually construing today, "wireless
25 communication devices." It uses that term, for

1 example, in the abstract. It also uses that
2 term in column 2 and column 4, and it uses that
3 term throughout the claims.

4 So even to the extent -- well, I'll say
5 this: Starz has put forward quite a bit of
6 citations as to mobile devices, but there's
7 simply no evidence that mobile devices are
8 commensurate in scope with wireless devices,
9 which is the term that we're here to construe
10 today.

11 THE COURT: Thank you very much.

12 All right. Mr. Caixeiro, any final words
13 on "wireless device"?

14 I did have one quick question. Out of
15 curiosity, if I disagree with your position and
16 find that the statement you pointed to is not
17 lexicographic, do you want me to say anything
18 more, or do you agree with them that we don't
19 need further construction, or do you have an
20 issue with their alternative proposal?

21 MR. CAIXEIRO: Well, yeah. I don't
22 think we've heard any argument, really, in
23 support of their proposal. I mean, the only
24 argument we've heard was an argument why
25 Starz's proposal is incorrect, which I disagree

1 with. And my fundamental problem with
2 VideoLabs's proposal is that it's broad to the
3 point of encompassing a wide variety of
4 products that could either be seen or
5 considered and certainly were not referenced
6 anywhere in this patent. So yeah, I would
7 appreciate elaboration from Your Honor if you
8 were to disagree.

9 THE COURT: Just to make sure I
10 understand the answer is no? If I disagree
11 with your proposal, do you want me to say
12 anything more, or do you want me to just say
13 we're not going to construe that, we're going
14 to leave it at "wireless communication
15 devices," or do you want me to go with theirs?

16 MR. CAIXEIRO: If you disagree with
17 us, I would prefer you leave it.

18 THE COURT: Leave it. Understood.

19 MR. CAIXEIRO: I would only make two
20 additional points, Your Honor.

21 First, I'm not sure that I quite
22 understand the difference counsel is drawing
23 between a shorthand or acronym and a definition
24 for purposes of claim construction, especially
25 when you're talking about express definition.

1 And I would say this as well: Even if
2 you were to view the "such as" clause as
3 embodiments, as opposing counsel argued, I
4 think certainly to Starz, an acceptable
5 definition would be the first portion of that
6 sentence, which is "personal mobile and
7 communication devices," and you could strike
8 anything after that as the definition.

9 THE COURT: In other words, you agree
10 that the issue here is whether or not this has
11 to be personal and mobile, small, handheld?

12 MR. CAIXEIRO: Exactly. Exactly.

13 THE COURT: Understood. All right.
14 Let's move on to the next term.

15 MR. CAIXEIRO: Okay. Thank you, Your
16 Honor.

17 Eric, could I ask you to please pull our
18 slide deck back up and jump to the "content,"
19 "digital content" and "product," "digital
20 product" term. That's slide 11, please.

21 So, Your Honor, once again, we are
22 looking at the exact same patent, and as
23 previously mentioned, this is a patent
24 concerning the publication, purchase, and
25 delivery of certain software data, we believe

1 to mobile devices, and the specific type of
2 software or data that's referenced here is
3 "content," "digital content," "product," and
4 "digital product."

5 And as a preliminary matter, the patent
6 teaches us that those four concepts are all the
7 same thing. Those are interchangeable terms,
8 and that's from column 3 lines 48 through 53.
9 So we can talk about any one of them and mean
10 any of the others.

11 If you go to the next slide, please,
12 Eric.

13 Here, to crystallize the dispute between
14 the parties, the question is whether an item
15 can be content or a product if it is not for
16 purchase, and VideoLabs is going to argue that
17 mere delivery of the software is sufficient for
18 the software to be content or a product, and
19 Starz will contend that in order to be content
20 or a product, the software must be available
21 for purchase.

22 If we could go to the next slide, please,
23 Eric.

24 And there's a variety of pieces of
25 intrinsic evidence that support Starz's

1 construction. We'll start here what we're
2 looking at here, Your Honor, is Figure 3 from
3 the '790 patent, and this shows components of
4 what the patent refers to as a download
5 manager, and in this patent, content providers
6 make products available to wireless services
7 subscribers through this download manager.
8 This is how the recipients will receive their
9 content, whether it's a game, whether it's a
10 song, whatever the case may be.

11 And throughout this download manager,
12 purchases are required. If you look, for
13 instance, at Box 31, the delivery manager, that
14 is described in the patent as "the interface
15 that delivers purchased content to
16 subscribers." If you look at slide 33, the
17 other red box, which is the business and
18 operations manager, that's described as the
19 portion that manages billing for purchases.

20 And now looking at some of those
21 sub-boxes, there's a Box 39. That's a
22 storefront that's the user interface for making
23 purchases. Slide 37, the device capability
24 manager selects an appropriate limitation of
25 what has been purchased. And slide 38 stores

1 purchasing information.

2 Throughout the discussion of the download
3 manager, this is all in the context of a
4 purchase, and I think what you're going to hear
5 from VideoLabs is a focus on the aspect of this
6 patent that discusses the delivery of the
7 content. And to be sure, this patent
8 references delivery, and, you know, that does
9 not obviate the requirement for a purchase.
10 For instance, I believe you're going to be
11 pointed to language that simply says that
12 purchase and delivery is required in this
13 patent, and that's conjunctive, not
14 disjunctive. It's an "and," not an "or."
15 Nothing in the patent says that delivery or
16 transfer alone makes an item a product.

17 If you go to slide 15, Eric, please.

18 If you look at extrinsic evidence, that
19 supports the definition. For instance, the
20 *Microsoft Computer Dictionary* from 2002 talks
21 about a product is something that's developed
22 to for the purpose of competing in a commercial
23 market, and that's consistent with a purchase.

24 Go to the next slide, please, Eric.

25 The other issue that may come up is this

1 question of open-source licensing, and in its
2 briefing, at least, VideoLabs contended that
3 open-source licensing is not an actual
4 purchase, yet it occurs in the world, and so
5 therefore, purchasing must not be required
6 under this patent, and to that I have a few
7 responses.

8 The first is that I think there's an
9 unsupported assumption that open-source
10 licensing is not a purchase. For instance, I
11 think it's very common in open-source licensing
12 that there be quid pro quo and consideration.
13 Now, it may not be money, but there is
14 consideration.

15 The second thing is that there is a
16 non-supported assumption that the patent must
17 cover open-source licensing when, in fact,
18 nothing in the patent or specification of the
19 claim even discusses open-source licensing.

20 I think I'll end my presentation at that,
21 subject to any questions Your Honor may have.

22 THE COURT: I just want to make sure
23 I understand. Your view is that the method of
24 Claim 1 can't be infringed unless there's an
25 actual purchase, like a fee for the file that's

1 delivered?

2 MR. CAIXEIRO: It's funny you use the
3 term "actual purchase," and there seems to be a
4 distinction in the patent between a purchase
5 and a quote/unquote actual purchase, but more
6 to the -- I think the core of your question,
7 Your Honor, yes, our argument is that there has
8 to be a payment for the software.

9 THE COURT: The payment that's
10 specifically in exchange for the file that's
11 delivered under the method of Claim 1.

12 MR. CAIXEIRO: Very well put, Your
13 Honor. Yes.

14 THE COURT: Okay. Let me just make a
15 note. All right. No further questions on this
16 one. Let's turn it to the other side.

17 MS. MAUZE: Good morning again, Your
18 Honor. Taylor Mauze for VideoLabs.

19 And so I understood Starz's argument
20 today to actually quite narrow the disputes
21 from the briefing, so I think your question is
22 very pertinent, which is that Starz is seeking
23 to narrow this term to only what the patent
24 calls an actual purchase in every instance, and
25 I just want to note from the offset that the

1 parties are not at odds that purchase can be --
2 that content can be purchased. Both sides
3 point to language in the specification that
4 contemplates that. The parties are really
5 disputing whether or not actual purchase needs
6 to be contemplated in every single -- in order
7 for there to be infringement at all, just as
8 Your Honor questioned.

9 THE COURT: Let me make sure I
10 understand because there's two things going on
11 here. There's the issue of actual purchase,
12 whatever that means, so we're talking about it
13 here today, like Mr. Caixeiro just said, which
14 is payment in exchange for delivery of the
15 file. But does there have to be any purchase
16 at all in Claim 1? I mean, Claim 1 doesn't
17 talk about money at all. It talks about a
18 method of providing access for content. What's
19 your position on that? Are you conceding there
20 has to be some sort of exchange of
21 consideration contemplated, whether it be per
22 file or overall some sort of subscription?

23 MS. MAUZE: No, Your Honor, we don't
24 believe a purchase is necessary in Claim 1.
25 That's not what it says, and, in fact, that's

1 why VideoLabs's proposal is purchase or
2 delivery.

3 THE COURT: So this distinction
4 between actual purchase or license, your view
5 is we don't need to talk about that because
6 your position is something a lot different,
7 which is that there doesn't need to be any
8 purchase, actual or otherwise.

9 MS. MAUZE: Right, Your Honor, and
10 that's why "purchase or delivery" is the phrase
11 that we propose. That could be delivery
12 instead of purchase, for example. And that's
13 exactly what the parties dispute. We're really
14 disputing about whether or not it's "purchase
15 and" or -- purchase at all in the first
16 instance, as Your Honor just asked, and in the
17 second instance, even if purchase qualifies,
18 which I think the parties agree that "purchase"
19 is something that's contemplated for the
20 content, does delivery qualify, I'll use
21 Mr. Caixeiro's words, in the disjunctive,
22 basically.

23 THE COURT: Either way, there's going
24 to be delivery; right? When you say "delivery
25 or purchase." The method of Claim 1 requires

1 providing access, so there's going to be
2 delivery as part of performing the method of
3 Claim 1; right? Or is Claim 1 just about
4 providing access to?

5 MS. MAUZE: So, Your Honor, I'm not
6 sure I understand the distinction of "providing
7 access" and "delivery." Perhaps can I look --

8 THE COURT: Do you have to send them
9 the file to meet Claim 1?

10 MS. MAUZE: There has to be a
11 delivery contemplated to meet Claim 1.

12 THE COURT: So why do we even need
13 "purchase," let me ask you that, in the
14 construction? If there's purchase, there's
15 going to be delivery, is what you're saying.

16 MS. MAUZE: Yes, Your Honor, there is
17 a subset/superset relationship here. The
18 reason that "purchase" comes into the parties'
19 proposals is because of the language of the
20 patent. "Purchase" and "delivery" are
21 discussed. And Mr. Caixeiro put up a figure
22 that discusses the download manager, and the
23 download manager has the capacity for purchase
24 and/or delivery. That's the genesis of the
25 proposals.

1 THE COURT: Got it.

2 MS. MAUZE: Your Honor, one other
3 brief point. I do want to point you to the
4 citation in the specification where it
5 specifically says that actual purchase is not
6 required. That is here on this slide. It's in
7 column 345. I did understand Mr. Caixeiro to
8 perhaps attribute the actual purchase language
9 to VideoLabs, but that example comes out of the
10 specification. The specification specifically
11 says, "Purchase doesn't have to be an 'actual
12 or conventional' purchase."

13 I won't belabor the point. I think Your
14 Honor and Mr. Caixeiro had an interchange about
15 the distinction between an actual purchase and
16 exchange of money for delivery every time, as
17 opposed to something else, for example, a
18 license that the patent contemplates right
19 there.

20 THE COURT: I might have cut
21 Mr. Caixeiro off before he had a chance to
22 finish his argument, but there's also a dispute
23 about whether or not we should include in the
24 construction "a wireless services subscriber
25 and/or telecommunications subscriber," and you

1 don't like that, and I'm trying to figure out
2 why that is. Is there a dispute here that this
3 is relevant to? The claims already require
4 "wireless services subscriber," so what's the
5 problem here?

6 MS. MAUZE: Your Honor, is that
7 question directed towards myself or
8 Mr. Caixeiro?

9 THE COURT: Yes, it's directed
10 towards you, and I'll let Mr. Caixeiro have a
11 chance to add, but I really do have a question
12 more for you about it.

13 MS. MAUZE: Okay. Yes, Your Honor,
14 and I do think that slides would perhaps be
15 helpful here, so I'll, again, share my screen.

16 This was a part of the dispute that the
17 parties briefed. VideoLabs does contend that
18 customers are required here, and that's because
19 "customers" and "subscribers" are getting
20 commensurate scope in the patent. That's what
21 we see in the portion of the specification
22 cited on the screen: A customer is a
23 subscriber.

24 That's, again, contemplated in this
25 portion, where "customer" and "subscriber" are

1 used interchangeably. You'll see at the top
2 portion of the highlight, the subscriber on the
3 left hand is referred to the customer on the
4 right hand. The subscriber and the customer
5 are the same. Those are the genus or the broad
6 form of the term.

7 And what we understand Starz to be doing
8 is to be limiting the -- in their proposal the
9 "customers" to wireless services subscribers or
10 telecommunications subscribers, and there's no
11 support for that limitation. The other
12 distinction that I will make about Starz's
13 construction is their proposal is "a wireless
14 services subscriber and/or telecommunications
15 subscriber," which we view as a conception to
16 wireless services subscriber, in and of itself,
17 is not enough. This is broader than just
18 wireless services subscriber, so there has to
19 be a plus factor.

20 What Starz's construction ends up making
21 more confusing is "telecommunications
22 subscriber" is used nowhere in the patent at
23 all, so it's really unclear what "wireless
24 services subscriber and/or telecommunications
25 subscriber" means. Instead, we're left with an

1 understanding that this is broader than
2 "wireless services subscriber," but we don't
3 really know how. So VideoLabs proposes that we
4 use the term that the specification
5 contemplates, which includes "wireless services
6 subscribers" and something else called a
7 "customer."

8 THE COURT: Let me just ask you this,
9 though. Walk me through how this works in
10 Claim 1 because it said that you've got this
11 method for providing access for consent that's
12 going to be used on wireless communication
13 devices, and the method is you're going to have
14 content stored that's going to be available for
15 use in wireless communication devices that are
16 used by a plurality of wireless services
17 subscribers, and so I guess the question that I
18 have for you is the claim already requires
19 wireless services subscribers, that the content
20 to going to go to wireless services
21 subscribers, so why am I injecting the word
22 "customer" in here? Why can't it be -- what's
23 the problem with "including wireless services
24 subscribers" in the definition?

25 MS. MAUZE: Your Honor, I want to be

1 clear. Where the claim recites "wireless
2 services subscriber," neither party contends
3 that that doesn't mean "wireless services
4 subscriber." But because -- I'm aware of no
5 support that because the narrower "wireless
6 services subscriber" is recited in that portion
7 of the claim, that limitation needs to be
8 ported into the definition of a different term,
9 which is "content."

10 THE COURT: I get that. I guess my
11 question is, yeah, it doesn't have to be
12 except -- are you going to argue that the
13 customers that the content goes to are somebody
14 different than the people who are the wireless
15 services subscribers? Because if you're not,
16 why are we even arguing about this?

17 MS. MAUZE: Right, so in Claim 1
18 where it recites a "wireless services
19 subscriber," we are not going to argue that the
20 wireless services subscriber is not required.
21 Where "wireless services subscriber" is
22 recited, that is certainly a requirement. The
23 issue is just -- and I don't want to gloss over
24 Your Honor's confusion, I'd just be -- there is
25 no reason that a later recitation in the claim

1 should narrow an earlier recitation of a
2 different term.

3 THE COURT: Okay. Thank you very
4 much. Let's turn it over to Mr. Caixeiro.

5 Can you shed any light about how this is
6 going to impact the litigation if I include
7 "wireless services subscriber" in a definition?

8 MR. CAIXEIRO: Sure. I'm going to
9 start with an apology because this is something
10 I should have addressed first. As I was
11 preparing for today's hearing, I started
12 thinking of this the exact same way Your Honor
13 did, and I think because the claim language
14 talks about a "wireless services subscriber," I
15 don't think -- if you look at both parties'
16 constructions, I don't think anything after a
17 "by" is actually necessary for the construction
18 at all because the claim we'll talk about has
19 the wireless communications devices, so from
20 our perspective, I'd be willing to amend our
21 proposal to simply "software and/or data
22 embodying a file for purchase," which not to
23 put words in VideoLabs' mouth, but the analog
24 would be "software and/or data embodying a file
25 for delivery or purchase," and you end there.

1 THE COURT: Okay. All right. Great.
2 Perfect.

3 MR. CAIXEIRO: And I think that's
4 really all that I have, Your Honor.

5 THE COURT: Okay great. Let's move
6 on to the next term.

7 MR. HARMON: Good morning, Your
8 Honor. I'm going to bring up the slide show.

9 So, Your Honor, we're now moving to the
10 last term being construed in the '790 patent,
11 and that's the term "implementation." So
12 generally, "implementation" is related to the
13 content. As explained in the abstract, an
14 implementation is simply a version of the
15 content that now corresponds to a particular
16 type of device capabilities.

17 The actual dispute on this term is quite
18 simple. The parties' constructions, in large
19 part, are identical. And with respect to
20 Starz's construction, the parties agree that
21 everything that's actually in that construction
22 is an implementation.

23 Now, each of binary files or binaries,
24 software applications, and executable files,
25 these are things that are referenced in the

1 specification. The parties agree they can be
2 understood, and that they're a type of
3 implementation.

4 However, the only actual issue remaining
5 in dispute here is whether a software file can
6 be an implementation. Now, the short answer to
7 that question is no, and that's because the
8 phrase "software file" is vague and lacks any
9 clear meaning. No clear meaning is provided
10 because it's not actually a term or concept
11 that's discussed or explained in the patent,
12 either standalone or as an example of an
13 implementation.

14 Now, it's VideoLabs that is trying to get
15 this phrase into the construction, and yet it
16 has not pointed to any intrinsic or extrinsic
17 support to include it in the construction of
18 implementation. In fact, during briefing,
19 VideoLabs itself admitted that this
20 specification never actually mentions the term
21 software file at any point.

22 Moving from there, in order to argue that
23 this term isn't vague, VideoLabs has itself
24 given the phrase "software files" a definition
25 of its own, which is independent files used to

1 record or store information. Now, again, there
2 was no intrinsic or extrinsic support for this
3 assertion, but the meaning of "software files"
4 alone doesn't resolve this dispute. In
5 addition to whether the term "software files"
6 is vague at all, to be in the construction of
7 "implementation," that connection has to also
8 be supported in the specification.

9 Now, the only argument that VideoLabs
10 makes towards this point during briefing was
11 that there were multiple disclosures concerning
12 combinations of software and/or data that
13 implement claim techniques. Now, again, this
14 was cited without any support. These
15 particular disclosures were not identified, and
16 there was no additional explanation of how
17 combining software with data would allow a
18 person of ordinary skill in the art to
19 understand what the phrase "software files"
20 means, let alone that it means "independent
21 files used to record or store information."

22 Now, as I've been mentioning here, there
23 was no intrinsic or extrinsic evidence provided
24 for this term. The only thing VideoLabs did
25 cite during briefing was a series of cases

1 which at some point mentioned the phrase
2 "software files." I've got all the cases
3 listed here, and I don't think it's necessary
4 to run through them in detail, but from a high
5 level, you can see that none of these cases
6 were actually considering the full scope or
7 meaning of the term "software files," let alone
8 implementation, and certainly not in the
9 context of claim construction. Only one of
10 these cases, *Princeton Digital Image*, involved
11 a patent at all, and yet that wasn't a claim
12 construction case construing the meaning of the
13 term. That was considering a settlement
14 agreement, and during analysis of the
15 settlement agreement, it referred to a .cat
16 file as a software file.

17 THE COURT: Let me ask you, Counsel.
18 I want to make sure I understand what your
19 position is. So the patent talks about the
20 types of content that can be delivered to
21 include applets, images, screen savers,
22 wallpaper. It's your position that if those
23 items of content aren't stored in binary form,
24 that they're not an implementation; right?
25 Those things I've just discussed are not --

1 they're not applets -- excuse me -- they're not
2 applications, necessarily, they're not
3 executable files, and if they're not binary
4 files, they wouldn't be covered under your
5 construction of "implementation."

6 MR. HARMON: Yes, Your Honor. The
7 patent agree that binary files, software
8 applications, and executable files are the
9 covered versions. Now, there can be different
10 types of content that are listed in the patent
11 that you listed off.

12 THE COURT: Let me make sure I
13 understand. If the content is not an
14 application or an executable file, if it's more
15 some item of media that's not executable or an
16 application, and it's not stored in binary
17 form, it's not, under your definition of
18 "implementation," going to be covered.

19 MR. HARMON: Yes, that's correct.

20 THE COURT: Okay. Understood. All
21 right. Let me hear from the other side.

22 MS. MAUZE: Good morning again, Your
23 Honor. Taylor Mauze for VideoLabs, and Your
24 Honor's question is exactly right. As you can
25 see on my screen, Starz's construction -- I

1 should take a step back. The '790 patent
2 provides multiple examples of what an
3 implementation can be. The parties agree that
4 those are examples given in the specification,
5 and Starz's construction simply doesn't include
6 all of them.

7 And so on the left, you'll see Starz's
8 construction. It includes a binary file.
9 That's an example given in the specification.
10 It includes an executable file. On the right,
11 you'll see this includes an EXE file. There
12 are the main portion of the specification, such
13 as applets and iApplis, which are nowhere
14 included in Starz' construction, and I didn't
15 read Starz to -- I have not seen any argument
16 or evidence proposed by Starz that would
17 justify limiting the -- this term, frankly.

18 THE COURT: No other questions on
19 this from you.

20 Mr. Harmon, anything else you wanted to
21 add?

22 MR. HARMON: Yes, Your Honor, just
23 one thing to add. Starz is not disputing that
24 those different types, the EXE files, the
25 applet, the iAppli, Starz does not dispute

1 those cannot be content. Starz believes those
2 can fall within the idea of a software
3 application. A software application generally
4 is computer program that's designed to carry
5 out some specific task on a computer other than
6 one relating to the operation of the computer
7 itself. So all of those concepts that are
8 disclosed in the parenthetical on that slide
9 fall within the three categories. They can be
10 represented as a binary, as in a software
11 application, or as an executable file.

12 THE COURT: I will say this: I'm
13 closer to one of skill in the art in 2003 than
14 I am one in 2022, but can't something be --
15 can't something be not an application or an
16 executable file and not be stored? Couldn't an
17 item of media, say it's a video or a song,
18 could it be stored in a way that's not binary?
19 Or I don't think of a download of a song or a
20 video as an application. I think of that as --
21 it's a software file. It might not necessarily
22 be stored in binary or as an executable file.
23 What am I missing here? Maybe we don't have a
24 dispute if you agree that those things are
25 covered under applications and executable

1 files.

2 MR. HARMON: Yes, we agree that what
3 is listed in the patent are covered. Like I
4 mentioned, I believe it falls within "software
5 application," which can be a program, but the
6 phrase "software files" in itself is vague.
7 It's not discussed in the specification, and
8 there hasn't been any actual evidentiary
9 support, intrinsic or extrinsic, to be
10 included, let alone with the particular
11 definition that VideoLabs assigned to it.

12 THE COURT: So "application" to me
13 suggests that it's something that can run on
14 its own without the use of another executable
15 file. Is that not how you understand it?

16 MR. HARMON: I believe I agree with
17 that, yes.

18 THE COURT: Okay. Ms. Mauze, I think
19 you want to add here? Is there a way we can
20 get this worked out?

21 MS. MAUZE: Your Honor, I -- so the
22 dispute here today appears to be that Starz
23 proposes that "software applications" covers
24 all these files. What I'll say is, exactly as
25 Your Honor alluded to earlier, there is a world

1 where an applet could be a software
2 application. "Applet" is much broader than
3 that, and VideoLabs's proposal seeks to
4 encompass the broader portion of "applet"
5 because there's no disclosure in the
6 specification that would justify the limitation
7 of it.

8 THE COURT: Mr. Harmon, is there
9 anything you want to add to that?

10 MR. HARMON: I don't think so, Your
11 Honor. No other points.

12 THE COURT: Very good. All right.
13 Let's go on to the next dispute.

14 MR. CAIXEIRO: I think this takes us
15 to -- Eric, if you could pull up the PowerPoint
16 again, we're moving on to a different patent,
17 the '559 patent, and the construction of the
18 term "download." Jump to slide 23, please,
19 Eric.

20 So the '555 -- sorry the '559 patent at
21 Claims 2 and 4 discusses an apparatus that
22 includes a processor that, among other things,
23 can send to a terminal an instruction to
24 download content.

25 If you go to the next slide, here, the

1 key issue in dispute between the parties is
2 whether "downloading" is synonymous with
3 "transferring." And Starz's position is that
4 "downloading," within the meaning of this
5 patent and at the time of this patent,
6 referenced storage for subsequent use, whereas
7 transferring can be unstored and for immediate
8 use.

9 And now let's look at portions of the
10 specification that discuss "downloading" for
11 some insight here. First, we are looking here
12 at Figure 5, which is one of the depictions of
13 a terminal in this patent, and what this
14 demonstrates is that content comes in through a
15 receiver, goes to a controller, and then can be
16 stored in several kinds of memory. There's a
17 volatile memory, a SIM, and a nonvolatile
18 memory. What the specification is that upon
19 downloading the content, the terminal can store
20 the content in memory such as for subsequent
21 use by a user in the terminal. This is
22 discussing downloading in the sense of
23 receiving and storing for use.

24 If we go to the next slide, please, Eric.

25 We now look at Figure 6, and this is a

1 flowchart of the method for controlling the
2 flow of content. From the very beginning, you
3 have the Step 100, which is receiving and
4 storing, in other words as Starz is asserting,
5 downloading pieces of content at the terminal.

6 And then what's also enlightening is if
7 you look at the next step, Step 102, the next
8 thing that happens is after the terminal stores
9 the content, it sends out the status
10 termination messages to the content flow
11 manager. And what are those status information
12 messages? Those are information concerning
13 storage capacity and the content that's being
14 stored and downloaded within the memory. So
15 from the beginning of the claimed method, it's
16 not just a transfer. It's a transfer and
17 storage.

18 If we go to slide 28, please, Eric.

19 Now, this figure is one that VideoLabs
20 relies on, and they cite it to mean that
21 storage is not required, but I think it's one
22 of the strongest examples of storage being
23 required. And what VideoLabs focuses on is the
24 fact that Box 118 says "download new content,"
25 and Box 120 is a different box that says "store

1 the content." However, I think you need to
2 start the inquiry with Box 116, and 116 says,
3 "What do you do when there's new pieces of
4 content to download?" And from 116, that
5 downloading has and requires two parts, Box 118
6 and 120. So there's a storage component in
7 downloading as referenced in Box 116. The only
8 option here to store. And equally important,
9 there's nothing in the patent that ever says
10 that mere transferring is the same thing as
11 downloading.

12 If you go to the next slide, please,
13 Eric.

14 In essence, what VideoLabs is arguing is
15 that downloading and what we now refer to as
16 "streaming" are indistinguishable. And even in
17 2002 -- now, there was not a lot of streaming
18 going on. What was happening in 2002? We know
19 if we look here at the *Media Streaming Over the*
20 *Internet* article, that there's two modes of
21 transmission of data over the internet.
22 There's a download mode where the the user can
23 play the downloaded file only after the whole
24 file has been downloaded. And then there is
25 streaming mode, where the content need not be

1 downloaded in full and plays out what parts of
2 content are being received. I can tell you
3 from spending hours at a computer in college at
4 this time, downloading meant you had to get the
5 whole file on to your computer and then press
6 play.

7 THE COURT: Isn't that really what
8 the issue is here? Let's back up a little bit.
9 The problem here, we're talking about
10 downloading versus streaming. That really is
11 what we're after; right? Do you agree with
12 that?

13 MR. CAIXEIRO: Yes, Your Honor.

14 THE COURT: So the question I have
15 for you is, even streaming, there's some
16 storage going on; right? Even if it's
17 transient, there's some amount of storage going
18 on. The real issue here is whether or not a
19 complete copy of the file ever exists on the
20 client side; right?

21 MR. CAIXEIRO: I think that's
22 partially correct. I think whether there's a
23 complete file, and I do think there's a timing
24 aspect of download versus streaming, where
25 there is -- in streaming there is if not -- you

1 mentioned the word "transient." Maybe another
2 word is "instantaneous," but the point of
3 streaming is as you're receiving it, you're
4 playing it back, and there may be a small
5 storage component.

6 Downloading really has two aspects. One
7 is there's an aspect, are you downloading the
8 whole file? And I think the intrinsic evidence
9 says that at the time of the patent, we're
10 talking about downloading the whole file. But
11 there is also a timing component, which is
12 certainly you're not talking about
13 instantaneous play back.

14 THE COURT: Let me ask you this: Say
15 I agree with you about downloading the whole
16 file. Why should I then say I'm going to
17 exclude downloads where the file is also being
18 instantaneously played back? Do I need to do
19 that?

20 MR. CAIXEIRO: No, Your Honor, if
21 downloading involves the whole file, as we
22 suggest, then I think it necessarily flows from
23 that that there can't be any instantaneous
24 playback because you're downloading the whole
25 file first.

1 THE COURT: Weren't you the side that
2 gave me an article that suggested that you
3 could be downloading the whole file and playing
4 back at the same time? Wouldn't that still be
5 a download? It results in it being stored on
6 the client side computer.

7 MR. CAIXEIRO: I think -- I'm not
8 sure I know exactly which article you're
9 referring to, so to directly answer that, I
10 don't recall. I'm happy to look at --

11 THE COURT: I guess the question is,
12 you've got downloading and you've got streaming
13 and then you've got the process of downloading
14 where you might be able to start watching the
15 video before it is completely downloaded. Why
16 do I need to exclude the last one?

17 MR. CAIXEIRO: One is certainly a
18 download. Streaming we think is not a
19 download. I think two is hard to call,
20 frankly, and I think to me the question is a
21 timing issue, because if you're excluding
22 streaming, which I think is appropriate to be
23 excluded, that middle scenario is much closer
24 to streaming.

25 THE COURT: The middle scenario falls

1 under your proposed construction, which is
2 copying and storing memory at the terminal for
3 subsequent use. Even if you're using it now,
4 you're still copying and storing it for
5 subsequent use also.

6 MR. CAIXEIRO: But I think we would
7 say the word "subsequent" there is doing the
8 work, and certainly, that in our definition,
9 the core situation is you're downloading it,
10 storing it for a later playback, and then
11 playing it. In that middle situation, there's
12 at least some aspect. The beginning of the
13 file is beginning downloaded and then
14 subsequently played back. Maybe before the
15 entire file is downloaded, but it's not
16 instantaneous.

17 THE COURT: Okay. I understand that
18 position. Let me make sure I don't have any
19 other questions on this. Okay. No. Thank you
20 very much. Let's hear from the other side.

21 MR. MATULEWICZ-CROWLEY: Your Honor,
22 this is Michael Matulewicz-Crowley on behalf of
23 VideoLabs.

24 So I just -- let me share our
25 presentation. Can Your Honor see that slide?

1 THE COURT: Yes.

2 MR. MATULEWICZ-CROWLEY: Wonderful.

3 So just to kind of take a step back and look at
4 the two different constructions that are being
5 proposed here, because what I'm hearing from my
6 colleague from Starz is that they have a
7 conception of what their construction might do
8 that goes a little bit above and beyond, a
9 little bit different, than what the words say.
10 So there's only two areas of difference in the
11 parties' construction, really only one where I
12 think there's a substantive dispute.

13 To address the first one first,
14 VideoLabs' construction uses the word
15 "transfer," and Starz's construction uses the
16 word "copy." Now, I don't know that there's
17 really any difference in those. We said in the
18 briefing we don't see them as being different,
19 as having a substantive difference. Starz
20 never pointed to one. In fact, I think during
21 my colleague's presentation, he often said
22 "transfer and store" instead of "copy and
23 store."

24 So "transfer" is the word that's used in
25 the specification. The specification never

1 actually uses the word "copy," and as we were
2 kind of talking about, it introduces this
3 confusion that we're just going to have to deal
4 with later about what exactly their
5 construction covers. So on that first issue, I
6 think it just makes the most sense to adopt the
7 specification's language and use "transfer."

8 To get to the real meat of the issue now,
9 that is the storing dispute, whether storing is
10 required is whether storing is a part of the
11 word "download." And I think that's a slight
12 difference in phrasing because what we're not
13 talking about here today is whether downloading
14 and storing often happen together or whether
15 the patent contemplates the idea of storing.
16 The question in front of Your Honor is whether
17 the verb "download" as used in the claim means
18 "storing."

19 So I'm going to walk through the details,
20 but here's the punch line: The patent
21 distinguishes between the acts of storing and
22 downloading. They're separate actions, and
23 downloading doesn't mean storing. In fact, the
24 patent doesn't really make sense if you assume
25 downloading does mean storing, because the

1 patent says to transfer and store and store
2 again.

3 Let's take a look at this. So this is
4 the portion of the specific that my colleagues
5 from Starz were talking about, and this is in
6 column 13 beginning line 51, and then on the
7 right side we have Figure 6, which is what the
8 portion of the specification is talking about.

9 First, the server figures out whether
10 there's some new content to download. If there
11 is, the new content is downloaded. This is
12 shown in Box 116, which is figuring out if
13 there's something new, and 118, which is the
14 actual act of downloading. Then, upon
15 downloading the content, so after the content
16 is downloaded, then you store the new content,
17 and that's what's shown in Box 120. So as a
18 matter of logic and law, those are two
19 different actions.

20 THE COURT: What about as a matter of
21 computer science? How can you download
22 something without putting it in memory
23 somewhere?

24 MR. MATULEWICZ-CROWLEY: Your Honor,
25 I think that's a very important point. The

1 fact that something might happen in an action
2 or might be a part of a system doesn't mean
3 that it gets imported into a claim or in
4 particular a claim term.

5 So for example, the claim certainly
6 requires electricity. There's all sorts of
7 things that are required by the claims and that
8 might happen as a result of claim, but what
9 we're here talking about today is what the word
10 "download" means, and I think this is
11 highlighted if we look briefly at Claim 7,
12 which is a different claim than is asserted and
13 that we generally don't talk about, but Claim 7
14 explicitly claims the idea of storing. The
15 point isn't that storing has nothing to do with
16 the invention and the inventors had never heard
17 of it. The point is that when drafting a
18 claim, the patentee is allowed to specifically
19 claim the different portions, the different
20 aspects of the invention that's disclosed in
21 the specification, that is to be claimed in any
22 given claim.

23 So here, in Claims 2 and 4, when the
24 patentee chose to use the word "download," it's
25 talking about that transfer step, the Box 118.

1 But in Claim 7, for example, they chose to
2 claim the storing aspect of it, which is shown
3 in Box 120. And notably, it's that exact
4 language from Box 120 that's taken -- that
5 Starz takes verbatim to import into the
6 download construction.

7 THE COURT: I was trying to think of
8 a good analogy to ask you. My analogies always
9 kind of stink, but most of the time people
10 catch my drift. So the analogy I could think
11 of is instead of saying "downloading," what if
12 we said something like "moving boxes into a
13 storage shed." So at the end of this process,
14 you'd refer to them as being stored in the
15 shed, even though the concept of moving them
16 there and the concept of storing them there are
17 different concepts. So the patent recognizes
18 that those are different concepts, the action
19 of moving them and the concept of them being
20 stored after they are moved, but that doesn't
21 mean that you can move something without the
22 end result being that the box is stored in the
23 shed; right?

24 So if they're right that to one of skill
25 in the art, "downloading" is the concept of

1 taking the entire file and putting it somewhere
2 and that one would understand that the result
3 of that is that it exists in that place, what
4 is really the problem? Isn't that consistent
5 with the patent and how the patent describes,
6 you know, moving and storing or downloading and
7 storing?

8 MR. MATULEWICZ-CROWLEY: Your Honor,
9 I think a slightly different analogy is more
10 applicable. Let's imagine throwing a ball. So
11 you can throw the ball, and the patent might
12 say the goal here is we're going to throw the
13 ball and then someone is going to catch the
14 ball. But if you just want to target different
15 parts of that process, then you would say,
16 okay, we're going to claim the throwing of the
17 ball and then in Claim 7 we're going to claim
18 the catching of the ball, and that's a specific
19 choice that the patentee has to live with, that
20 maybe the ball isn't caught after you throw it.

21 THE COURT: I understand your
22 analogy. I guess, then, their dispute would be
23 when you use the word "download," to one of
24 skill in the art, it implies both the throwing
25 and the catching, but I get your point, though.

1 MR. MATULEWICZ-CROWLEY: I think
2 that's where it comes into the difference
3 between intrinsic evidence and extrinsic
4 evidence, because here, if we look at the
5 portion of the specification on the screen that
6 has not been talked about as much, the patent
7 specifically says the downloading can happen in
8 a whole bunch of different manners. It can
9 really be any sort of downloading that you can
10 think about. It's a broad definition of
11 downloading.

12 So it's VideoLabs's position that, yes,
13 there's all sorts of downloading, and there's
14 two pieces of extrinsic evidence that say
15 that -- we disagree slightly -- but Starz, at
16 least says, "downloading" here, when I think of
17 "downloading," I really think of the transfer
18 and the storing. Here, the patent owner is
19 saying, well, that's not how we think about it.
20 We think about it as downloading, and then
21 there's a different action of storing. And
22 we're intended to have this broad meaning of
23 "downloading" that can be any sort of
24 downloading. It can be this transient storage
25 that may be just in the buffer that maybe

1 someone wouldn't think of as storage. It could
2 really be any sort of downloading --

3 THE COURT: Where does it say that?

4 MR. MATULEWICZ-CROWLEY: Pardon.

5 THE COURT: Does it say that
6 anywhere, "buffer"?

7 MR. MATULEWICZ-CROWLEY: It does not
8 speak to the specific buffer. I was just
9 referring to -- okay.

10 So again, we don't necessarily agree with
11 what -- with Starz's interpretation of that
12 extrinsic evidence, and we have our own
13 extrinsic evidence that defines "download" --
14 the two dictionaries from the time -- defines
15 "download" just as the transfer process. But
16 really, at the end of the day, what it comes
17 down to is the patentee decided, here's how
18 we're using this word, and we're using it as
19 something distinct from the idea of storing.

20 THE COURT: Very good. Thank you
21 very much. I'll turn it back over to
22 Mr. Caixeiro.

23 Anything to add on this one?

24 MR. CAIXEIRO: Yes. I want to go
25 back to the throwing and catching analogy and

1 look at the claim that's relevant here. Let's
2 look at Claim 2.

3 I think when you look at the claim, when
4 it uses the word "download," it's clear that
5 "download" is the equivalent of the catch. And
6 how do we know that? Because the claim is
7 talking about the action of the terminal and
8 that the terminal is being instructed to
9 download; right? So if we use the throwing
10 analogy, "download" means catching. It doesn't
11 mean throwing.

12 THE COURT: Because -- just to make
13 sure I understand -- because one of skill in
14 the art would have understood the term
15 "download" to refer to the client side?

16 MR. CAIXEIRO: Yeah, because the
17 terminal -- in that language, it's the terminal
18 is being instructed to download as opposed to
19 the server being instructed to
20 download/provide, which is effectively
21 VideoLabs's proposal. The whole claim is being
22 written from the perspective of the baseball
23 glove, not the arm with the ball.

24 The one last thing I would mention is
25 Claim 7, as was pointed out, it's not asserted.

1 All that's been highlighted there and all that
2 language means is that the memory is configured
3 to store. Of course, that's true. If the
4 terminal has memory, the memory is configured
5 to store content, but that to me is not a
6 particularly meaningful insight into the
7 meaning of "download."

8 With that, I have no further comments,
9 Your Honor.

10 THE COURT: All right. Great. Let's
11 move on to the next term.

12 MR. HARMON: Thank you, Your Honor.
13 Give me a moment to bring this slide
14 presentation up.

15 So we're moving on now to the '794
16 patent. It's the first of the terms being
17 construed in the '794 patent. These have
18 generally been called the "assignment rule"
19 limitations. The issue here, Starz has
20 proposed and maintains that the phrase
21 "assignment rule" as used in the patent is an
22 indefinite term. VideoLabs has proposed a
23 separate construction, which raises additional
24 indefiniteness issues, so I think this is an
25 important point to start and to sort of

1 distinguish the issues that are presented here.

2 Starz believes that the term "assignment
3 rule" has no understandable meaning based on
4 the specification. Neither the claims nor
5 specification stake out any understandable
6 metes and bounds of the terms. Now, there are
7 separate indefiniteness issues that have been
8 raised here by virtue of the construction that
9 VideoLabs has proposed for the terms. This is
10 when you get into the issues that VideoLabs has
11 focused on relating to prosecution history
12 disclaimer and claim differentiation.

13 Now, the big issue here is that VideoLabs
14 has only addressed those secondary
15 indefiniteness issues that were created by
16 virtue of its own construction. At no point it
17 addresses the overarching indefiniteness issue
18 of what is an "assignment rule," because that
19 question has not been answered.

20 Moving on here, the term "assignment
21 rule" is indefinite in Starz's view, first
22 because it's not a commonly understood term.
23 It's not a term of art, so it needs to have
24 some understanding or explanation provided.
25 Now, neither the specification nor claims

1 actually gives a definition of the term
2 "assignment rule." All mentions in the
3 specification are to other types, such as
4 predefinable assignment rules. There's no
5 discussion of just what is an "assignment rule"
6 by definition. And the claims, which are the
7 best guide to understanding the meaning of the
8 term, don't provide any boundary or any
9 elucidation on the actual scope of the term.

10 I'm going to jump forward to slide 34.
11 This is a claim taken from the independent
12 claims here, 1 and 9. What these claims
13 require is they simply discuss the use of an
14 assignment rule. They don't ever define or
15 explain what an assignment rule is. Tracking
16 this language, the independent claims state
17 that each of the content-related data segments
18 are output together on the basis of an
19 assignment rule for assigning content-related
20 data segments. It isn't really providing any
21 explanation. It's simply circular language.
22 It's an assignment rule for assigning. That's
23 all it does.

24 Jumping back to slide 33, VideoLabs does
25 not build on this at all. Its own construction

1 is circular and conclusory. It defines the
2 term in its construction of "assignment rule"
3 as an assignment rule. There's no explanation
4 of what is required. When does one have an
5 assignment rule? Is any method of making a
6 comparison? Neither VideoLabs nor the
7 intrinsic evidence answers this question.

8 Now, that is the overarching
9 indefiniteness issue here, is that there's no
10 understanding of what this term means in the
11 independent claims. Now, by virtue of
12 VideoLabs' own construction, we do have some
13 additional indefiniteness issues. This is
14 where claim differentiation and prosecution
15 history disclaimer came into play. In
16 particular here, I'll focus on dependent Claims
17 20 and 21, which depend from Claims 1 and 9.

18 These claims require that the assignment
19 rule is not based on a time stamp. Now, that
20 means that the assignment rule, by definition
21 of Claim, 1 must be capable of being based on a
22 time stamp. That's the only requirement.
23 Based on independent and dependent claims, they
24 must have a difference in scope.

25 We've overlaid here on this slide

1 VideoLabs' proposed construction as how the
2 term would appear in Claim 1 with Claims 20 and
3 21. Comparing the red language here, a person
4 of skill in the art reading Claim 1 and Claim
5 20 would see that in both instances, we require
6 an assignment rule which can't be based on a
7 time stamp. If that construction is accepted,
8 a person of skill in the art wouldn't be able
9 to understand what difference in scope we're
10 dealing with, whether we're falling under the
11 independent claim versus the dependent claim.

12 Now, VideoLabs has argued here or intends
13 to argue, at least, that prosecution history
14 disclaimer overcomes the claim differentiation.
15 Now, if it is true, again, that does not escape
16 the problem that these claims remain identical
17 in scope, in which case they would be
18 indefinite because there would be no way, no
19 bounds, no metes and bounds, to understand how
20 these terms differ. So I think it's important
21 to frame it that way in terms of there are
22 multiple indefiniteness issues here, and
23 VideoLabs only addresses the ones created by
24 virtue of its own construction. There simply
25 has never been at any point an answer to the

1 question, what is an assignment rule?

2 THE COURT: Let me ask you, Counsel.
3 There's a few aspects of this I want to ask you
4 about. I've got another terrible analogy. You
5 can tell me why my analogy is bad. If we had a
6 really simple patent claim where Claim 1 said a
7 device comprising a chair and then you had a
8 dependent claim that said that "The device of
9 Claim 1 wherein the chair is made of atoms,"
10 your argument seems to be because we can't
11 think of a chair that's not made of atoms, then
12 Claim 1 must be indefinite, and that's not --
13 is that a good analogy?

14 MR. HARMON: I would say,
15 respectfully, not a great analogy in this
16 situation.

17 THE COURT: Great. Tell me why.

18 MR. HARMON: I would frame that issue
19 as -- if you're claiming a patent, a chair has
20 never been invented before, presumably. Now,
21 if you simply say "a chair," regardless of the
22 differentiation issue between the independent
23 and dependent claims there, if there's no
24 understanding of what a chair is in the art and
25 you never actually tell someone in the

1 specification what a chair is other than via
2 circular language, saying a chair is a chair,
3 you haven't defined any meaningful scope of the
4 term.

5 THE COURT: That kind of relates to
6 the next question I was going to ask you, which
7 is, VideoLabs wants to know from you, are you
8 saying that a predefinable assignment rule is
9 also indefinite?

10 MR. HARMON: Yes, we would argue
11 that -- obviously, there have been, and
12 VideoLabs focuses a lot on when does an
13 assignment rule at a point in time become
14 predefinable versus nonpredefinable. But in
15 the end, this is still an assignment rule,
16 which something that patent has never described
17 and VideoLabs has not provided a definition
18 for. Even in that case, that would be relating
19 to Claims 16 and 17, those would also be
20 indefinite because even if you know when
21 something might have been defined, you still
22 haven't answered the question, "What is it?"
23 And that's the issue that hasn't been answered
24 here and that we're facing.

25 THE COURT: So you even think -- just

1 too make sure we're clear for the record, you
2 think a predefinable assignment rule is also
3 indefinite?

4 MR. HARMON: Yes. Overall the phrase
5 "assignment rule" can't be understood in terms
6 of its full scope. You might be able to
7 understand when something has been defined, but
8 you can't understand what it actually covers in
9 full context.

10 THE COURT: Okay. Let me see if I
11 have any other questions.

12 If I disagree with you about -- or maybe
13 not disagree. If I find that at this stage in
14 the litigation that Starz hasn't met its burden
15 to show by clear and convincing evidence that a
16 person of skill in the art wouldn't understand
17 what an assignment rule was, I took you to be
18 saying -- do you also have an issue where
19 they're trying to carve out this exact timing
20 information? So would you want me to craft out
21 from their proposal the part where it says
22 "wherein the assignment is not performed by
23 using exact counting information from the data
24 segment"?

25 MR. HARMON: Yes. Certainly, if Your

1 Honor finds that the Starz has not shown the
2 claim term to be indefinite, we will be not the
3 accepting VideoLabs's construction here. And
4 this goes to part of what I was discussing.
5 Say Your Honor cuts out the language following
6 the wherein, "wherein the assignment rule is
7 not performed by using exact timing
8 information." Every word before that,
9 "assignment rule for assigning each one of the
10 content-related second data segments to one of
11 the content-related first data segments,"
12 that's not a construction. That is explicit
13 claim language pulled directly from the claims.

14 So in the end, there is no actual
15 construction of the term "assignment rule"
16 proposed by VideoLabs. Their construction is
17 simply that language and requirements from
18 dependent claims should just be appended onto
19 the end of this claim. There isn't an actual
20 construction that the Court can accept from
21 VideoLabs should it not find the term
22 indefinite.

23 THE COURT: Okay. I understand your
24 point about that. I think what the other side
25 might say is they could have proposed

1 something, like an assignment rule has to do
2 with correlating the segments, but they didn't
3 because they thought your real issue had to do
4 with predefined versus not predefined
5 assignment rules. But we'll put that aside for
6 now and hear from the other side and see what
7 they have to say and give you the chance to
8 have the last word, Mr. Harmon. Thank you.

9 MR. HARMON: Thank you.

10 MR. CARDENAS: Good morning, Your
11 Honor. Jaime Cardenas on behalf of VideoLabs.
12 Let me go ahead and share my screen.

13 And I want to start where Your Honor
14 ended, which is this idea of VideoLabs's
15 proposed construction. Let me put that up.
16 And Your Honor is exactly right, that we didn't
17 understand there to be an indefiniteness
18 argument solely focused on "assignment rule"
19 and assignment rules in their entirety, about
20 whether or not they're sufficiently described
21 in the specification. We did understand the
22 dispute to be more focused on predefinable
23 rules or, really, whether something other than
24 predefinable rules, like non-predefinable
25 assignment rules, are sufficiently described.

1 So with our proposed construction here,
2 the entire purpose was not to further clarify
3 what an assignment rule is -- we think that's
4 clear -- but just to give effect to the
5 statements of disclaimer that happened during
6 prosecution, and so that's why our construction
7 is the way it is. And I understood counsel to
8 continue to disagree with our construction. As
9 it stands, we've explained why we believe this
10 is a proper disclaimer. There hasn't been any
11 responsive argument to that. There's no
12 counterproposal, so it's disputed but, in a
13 sense, unopposed.

14 So unless Your Honor has any questions
15 for me about our proposal and the specific
16 negative limitation we have at the end, I'm
17 going to spend the rest of my time focusing on
18 the indefiniteness arguments.

19 THE COURT: I actually have a lot of
20 questions about that topic you're trying to
21 carve out. Let's start with that.

22 So normally, we have the accused
23 infringer arguing that there's been a
24 disclaimer. It's a little strange to see the
25 patentee try to carve out something that looks

1 like probably is in the prior art on the basis
2 that they made arguments that were accepted by
3 the examiner. This isn't a question as to what
4 "assignment rule" means. It's trying to carve
5 out some scope of something that looks like it
6 could be an assignment rule. That is, an
7 assignment rule that uses timing information.

8 MR. CARDENAS: I would mostly agree
9 with that, Your Honor. Sometimes it's a fine
10 line between whether you're actually
11 disclaiming something and just putting in this
12 language to make sure that everyone agrees it's
13 excluded, but I would agree with that. It was
14 three prior art references that were disclaimed
15 during prosecution. The language was fairly
16 broad in terms of how those references operated
17 and the basis on which they were
18 differentiated. So our goal here is to come up
19 with language that encapsulates all three of
20 those -- the way all three of those references
21 were distinguished.

22 THE COURT: Okay.

23 MR. CARDENAS: And I'm happy to walk
24 through that in more detail if Your Honor is
25 interested.

1 THE COURT: Yeah, I want to talk to
2 you about the prosecution history as it relates
3 to the *Rosenau* reference. I'm just pulling up
4 my notes here.

5 You're sort of suggesting that the
6 patentee was telling the examiner that
7 fragmenting data into segments using a clock
8 counter and then sending the corresponding
9 segments out together is not an assignment
10 rule, but that's not exactly what you argued to
11 the patentee, is it? So you argued that
12 *Rosenau* didn't disclose the assignment rule
13 because skipping blocks is not synching up,
14 which is a cute argument, and the examiner
15 accepted it. I think the other side -- the
16 problem for me is that sending out fragments
17 created on clock counter on 1:1 or 1:whatever
18 basis, why couldn't that be an assignment rule?
19 And you didn't say to the examiner it wasn't.

20 MR. CARDENAS: Does Your Honor have a
21 specific page number I can look to?

22 THE COURT: Sure. You definitely
23 talked about it in your argument. Let me pull
24 that up. DI 64, Exhibit 7.

25 MR. CARDENAS: Okay.

1 THE COURT: So you said here
2 *Rosenau* -- page 13 -- "*Rosenau* discloses a
3 system that synchronizes a video display with
4 audio playback. The synchronization is done by
5 using a system time clock. The synchronization
6 is based on the timing information parsed from
7 a data stream, which is loaded into a system
8 time clock counter and incremented according to
9 to a predetermined clock frequency." You're
10 just describing what *Rosenau* is.

11 And then you talk about how *Rosenau*
12 purported to solve a problem of video lagging,
13 and the problem is solved by skipping or
14 repeating frames, and you argue that skipping
15 or repeating frames is not an assignment rule
16 within the meaning of the patent, which is
17 correct, but that doesn't anywhere say that an
18 assignment rule can't be based on exact timing
19 information.

20 MR. CARDENAS: I believe I understand
21 the point Your Honor is making, and the way we
22 do interpret this is that the patentee was
23 intending to distinguish *Rosenau* on both of
24 those bases, the first one being about the use
25 of that exact timing information, and then we

1 do see that as how this is interpreted. And
2 the examiner, in response, didn't specify what
3 was convincing. They just said that they were
4 convinced.

5 THE COURT: Okay. All right. I
6 understand your position on that.

7 What does "exact timing information" even
8 mean? It means you can't have an assignment
9 rule that has anything to do with timing
10 information?

11 MR. CARDENAS: So I think the context
12 here provides some guidance on that, and this
13 is something a person of ordinary skill would
14 be familiar with, which is at this point in
15 time, leading up to this, the way,
16 predominantly, that data segments would be
17 aligned for rendering would be to use, I call
18 it exact timing information, but it's intended
19 to encompass time stamps or time codes. Often,
20 that's within -- stored within the data
21 segments. But I guess the point is that you
22 really need to know with incredible precision
23 how to align the segments because you're using
24 some time information and that the '794 patent
25 is fundamentally different from that because by

1 using these assignment rules and by aligning
2 segments instead and correlating them, you're
3 not concerned with exact timing information.
4 You're instead just concerned with matching
5 data segments together.

6 So that is kind of, we would say,
7 somewhat inherent to the nature of an
8 assignment rule, in that you are assigning
9 different data segments together. You're
10 synchronizing or correlating them together, and
11 that is not a timing -- an exact-timing based
12 type process, so that is why we chose that
13 language, to try to really encapsulate that
14 difference. Again, some of that comes from the
15 reverences, not just *Rosenau* but the other one
16 as well, the *Shin*. And also, again, from the
17 nature of assignment rules.

18 THE COURT: Okay.

19 MR. CARDENAS: Does Your Honor have
20 any other questions about --

21 THE COURT: No. No other questions
22 about that. Thank you.

23 Mr. Harmon --

24 Or did you want to say something else?

25 MR. CARDENAS: Would Your Honor like

1 me to address the indefiniteness issues?

2 THE COURT: No, that's fine. Thank
3 you.

4 Mr. Harmon.

5 MR. HARMON: Yeah, thank you, Your
6 Honor. I guess just one point I would like to
7 address is the question you just posed, is what
8 is exact timing information? Now, VideoLabs
9 itself answered that in its construction. It
10 can be using data segment time stamp
11 information. Now, again, that's identical to
12 what is already claimed in dependent Claims 20
13 and 21, so if that's included in the
14 independent claims, we're still left with no
15 difference in scope here. And that claim
16 differentiation issue, VideoLabs argued during
17 briefing, is overcome and obviated by the
18 prosecution history disclaimer. I never
19 particularly liked this saying, but VideoLabs
20 can't have its cake and eat it too. It can't
21 both get the prosecution disclaimer, get the
22 construction it wants, while leaving Claims 20
23 and 2 valid, and that's why Starz raised that
24 issue.

25 THE COURT: Okay. I just want to

1 make sure I understand. I took what they were
2 trying to carve out here was something broader
3 than using data segment time stamp information.
4 They could have said "wherein the assignment is
5 not performed by using data segment time stamp
6 information." That's not what they said. They
7 said "using exact timing information." So I
8 thought what was going on here -- I don't know
9 what's really going on here, but one might
10 think they're worried about some prior art that
11 used timing information in some way to fragment
12 the data and that they're going to argue that
13 that doesn't meet this claim limitation because
14 they carved this out. Am I totally off base?

15 MR. HARMON: I think you're on the
16 right track, Your Honor. Like you mentioned
17 earlier, it's odd for the patentee to be
18 disclaiming its own claim scope. Even "exact
19 timing information" as a phrase is broader than
20 "time stamps," they still explicitly said in
21 the parenthetical that it includes data time
22 stamp information. Even if what they
23 disclaimed is still in Claim 1, when you look
24 at Claim 20, they've told you that Claim 20
25 provides nothing new. There's no additional --

1 there's no additional cutout there.

2 THE COURT: Okay. Thank you very
3 much. All right. I think we just have one
4 term left. What term is that?

5 MR. CARDENAS: Your Honor, just
6 quickly, may I make one more additional point
7 about the file history?

8 THE COURT: That's fine. Go ahead.

9 MR. CARDENAS: Let me quickly share
10 my screen. I might have shared the wrong
11 screen. Do you see the PDF, or do you see the
12 PowerPoint slide?

13 THE COURT: I see a PDF.

14 MR. CARDENAS: Okay. And it's
15 *Rosenau* and *Yamane*?

16 THE COURT: Okay.

17 MR. CARDENAS: Okay. So just to give
18 further context on why we understand these
19 statements by the patentee to be distinguishing
20 on both of these patents is this section starts
21 by talking about how *Rosenau* and *Yamane*
22 combined don't disclose this claim limitation.
23 And what they focused on is on the basis of an
24 assignment rule. So the lead-up to two
25 discussions of different aspects of *Rosenau* is

1 that we're talking about why -- what is
2 different between the claim limitation of an
3 assignment rule and what's being described in
4 these two references. And in fact, this right
5 here at the bottom of page 313 is the first
6 argument that we rely on about synchronization
7 based on a time clock. And then the next
8 paragraph is "additional," indicating, again,
9 to us that this is a second base why *Rosenau*
10 does not disclose an assignment rule. I wanted
11 to point that out for Your Honor.

12 THE COURT: I appreciate it. Thank
13 you.

14 Mr. Harmon, anything to add in response
15 to that.

16 MR. HARMON: I don't have too much to
17 add in terms of sort of the 103 rejection and
18 the extent to which the prior art is covering
19 the scope. I would just point out, not to,
20 again, distract from the are overall issue
21 here, which is indefiniteness, neither of these
22 rejections were on a 112 basis, which is the
23 actual issue that still remains unanswered
24 here. With that, I don't have anything else,
25 Your Honor.

1 THE COURT: All right. Thank you
2 very much. Let's go to the last term.

3 MR. HARMON: All right. Let me share
4 the screen. So now we're at the last term.
5 It's also in the '794 patent, and this is
6 "content-related data segments." Similarly to
7 earlier today, all Starz is doing here is
8 relying on the express definition that the
9 patentee chose to give this term, and that is
10 segments of content data that have a
11 syntactical meaning within the respective data
12 file.

13 Now, moving to slide 38, right off the
14 bat, it tells you what the term
15 "content-related" means. Really, there's no
16 dispute as to "data segment" between the
17 parties, so the issue is really, what does it
18 mean to be a "content-related data segment"?
19 The patentee expressly stated in definitional
20 language that it means that the first and
21 second data segments have a syntactical meaning
22 within the respective data file. This, again,
23 is a lexicography issue. The patentee created
24 this term and told everyone reading the patent
25 how it's defined. That express definition

1 should control here.

2 However, VideoLabs -- what VideoLabs
3 argued in its briefing is that that express
4 definition is vague, ambiguous, and confusing,
5 which is -- it's an argument in terms of the
6 patentee has said what its patent means and
7 then VideoLabs argues that that explanation
8 can't be understood. No, the real issue is why
9 does VideoLabs argue this when there's an
10 express definition? And that is because
11 VideoLabs wants the Court to ignore the express
12 definition in favor of exemplary language and
13 exemplary function that appears in the
14 specification.

15 For example, VideoLabs points to the
16 underlying language here, which follows the
17 express definition signified by exemplary such
18 as "e.g.," and they argue that we can't use the
19 express definition because the meaning is
20 explained later on. What's underlined here and
21 what VideoLabs is pointing to does not describe
22 the full metes and bounds on the invention.
23 All it's done is provide an example that falls
24 within the definition the patentee already
25 provided.

1 There's the exemplary language VideoLabs
2 wants to focus on. They also want to focus on
3 exemplary function when crafting their own
4 construction. Proposed constructions are
5 rejected where they define the term by what is
6 done with it rather than defining itself by
7 what it is. Another example that VideoLabs
8 relies on I'll refer to as the quote/unquote
9 good morning example, and they argue that this
10 language in the specification demonstrates that
11 data segments are ordered in a particular
12 manner within a data file.

13 Now, as a preliminary matter, that is not
14 the case. What the example actually shows is
15 how the content-related data segments that
16 contain "good" and "morning" can be used, not
17 what they are. All that example requires is
18 that the data segments be output in a certain
19 order. They don't require a particular
20 ordering previously within the data file, and
21 they certainly don't explain what a
22 content-related data segment is.

23 Now, this is an issue in terms of pulling
24 this function, what is done with a
25 content-related data segment, into the

1 construction of the term itself, is one placed
2 in context of the actual claim language. What
3 VideoLabs' proposed construction accomplishes
4 is rendering large parts -- remaining parts of
5 the claims irrelevant and without purpose.
6 These claims, as you can see here overlaying
7 VideoLabs' proposed construction with Claims 1
8 and 9, those claims, other claim language,
9 separately requires the sequential outputting.

10 For example, VideoLabs' proposed
11 construction simply requires ordering that will
12 achieve a result, presentation in intended
13 presentation order, when rendered sequentially.
14 Now, that result is already achieved by other
15 language of the claims. The claims require
16 sequentially outputting according to
17 chronological sequence on the basis of an
18 assignment rule. Were VideoLabs's proposed
19 construction accepted moving all these
20 functions into the order of data segments,
21 there would be no need for the rest of this
22 claim language if the data segments, by
23 definition, had to be ordered to achieve this
24 result, we wouldn't need the rest of the claim
25 language that tells you how to get this result.

1 THE COURT: So what's the dispute
2 here? Explain to me how either your
3 construction or their construction is going to
4 matter to some issue that's relevant to
5 infringement or invalidity.

6 MR. HARMON: Yes. So with Starz's
7 construction, which is just the express
8 definition, that just talks about -- it
9 actually defines what a content-related data
10 segment is. We can understand when a
11 particular data segment or something accused of
12 being a data segment in this case comes up,
13 whether it falls within that definition. Now,
14 VideoLabs refocuses that issue to not how you
15 define a data segment but what order are the
16 data segments appearing in in a particular data
17 file. That's shifting the view, and it's
18 contradicting the express definition that the
19 patentee provided.

20 THE COURT: Okay. So I take your
21 point that there's an express definition, but
22 will the jury know what "segments of content
23 data that have a syntactical meaning within the
24 the data file" means? Their point is that,
25 let's explain to the jury what that is. And

1 what that is, is that means that when you put
2 it in your -- that the order is important.

3 MR. HARMON: So Starz -- the term
4 "syntaxical" can be understood and it can be
5 explained to a jury. The issue is it does not
6 mean what VideoLabs has proposed. A person of
7 ordinary skill in the art reading these
8 examples starting with column 3, line 65, sort
9 of moving on to the next couple paragraphs
10 where the express definition appears, a person
11 of skill in the art would understand the word
12 "syntaxical" to mean that within a given file,
13 a segment of data within that file has an
14 association with a segment of data in another
15 file that's relevant to the content being
16 streamed because the issue here is what is
17 claimed is a method for synchronization.
18 What's important is that we're synchronizing
19 data segments from multiple data files, the
20 most common being audio and video. Now, a data
21 segment within the the data file has a
22 syntaxical meaning if it has association with
23 a data segment in another file such that --

24 THE COURT: I thought that this --
25 okay. Let me make sure I understand because I

1 thought the issue with "content-related data
2 segment" had to do with the relationship
3 between segments of data in the same file as
4 well as in the same file. No?

5 MR. HARMON: The syntactical meaning
6 it has, it requires something from another data
7 file. The meaning that data segment sitting
8 within its own file has, it has a syntactical
9 meaning if there's an association with a
10 segment of content data in another file, such
11 that when we are streaming the content through
12 the method of the claim, that we're getting
13 something back that makes sense.

14 THE COURT: Is it appropriate for the
15 Court just to let you argue to the jury that
16 "syntactical" means whatever your expert says
17 it means? Isn't that the Court's job on claim
18 construction, to get it straightened out at
19 this stage?

20 MR. HARMON: If the Court wanted to
21 go beyond and offer a definition of on its own
22 of "syntactical" in the way Starz has provided
23 it, taking the definition and construction as
24 Starz has put forth, that at least allows Starz
25 to explain this concept to the Court, whereas

1 VideoLabs's construction not only does not
2 coincide with the express definition, it
3 actually contradicts it, and Starz would not be
4 able to make this argument.

5 THE COURT: All right. Understood.
6 Thank you very much. Let's switch it to the
7 other side.

8 MR. HARMON: Thank you, Your Honor.

9 MR. CARDENAS: Jaime Cardenas on
10 behalf of Plaintiff. Let me get my slides back
11 up.

12 Your Honor is exactly right. Just to be
13 direct, we don't really have much of an issue
14 with Starz's construction other than that a
15 jury couldn't possibly understand it, and it's
16 clear -- it's clear from the briefing and
17 became more clear just from now -- we heard
18 some more about what Starz believes
19 "syntactical meaning" means, and it's different
20 than what we believe it means.

21 THE COURT: So what's the dispute?

22 MR. CARDENAS: I'm not entirely sure,
23 Your Honor. I knew they didn't think -- my
24 understanding from the briefing was that they
25 didn't believe that "syntactical meaning" was

1 about requiring an ordering amongst the data
2 segments, so I believe they still dispute that.
3 And it sounded that they believe it had to do
4 with relationships between data segments in the
5 different files, and that, again, is very
6 different than what we believe.

7 Our position is what Your Honor
8 understood, which is that "syntactical meaning"
9 is about the relationship between data segments
10 within the data file. And as our construction
11 sets forth, the data segments are ordered
12 within that data file such that the content
13 will be presented in the intended presentation
14 order. Essentially, chronologically. And so
15 we're hearing for the first time a little more
16 about what they believe it means. I don't
17 believe they cited any evidence in the
18 intrinsic evidence in support of that. I'm not
19 entirely sure what the basis is. I'm happy to
20 go through and explain the basis for our
21 construction, at the very least.

22 THE COURT: I guess, is the patent
23 limited -- we're all assuming that we're
24 talking about videos here, but the patent is
25 not limited to videos; right?

1 MR. CARDENAS: That's correct.

2 THE COURT: So does including the
3 words "presentation order," is that
4 appropriate?

5 MR. CARDENAS: Well, let me clarify
6 what I mean when I say it's not limited to
7 videos. It is -- I think from the context, it
8 is related to, sort of broadly, audio-visual
9 content, but one of the data files might be,
10 for example, like, subtitles or something like
11 that or might be some metadata. There might be
12 other things that are synched that are not just
13 audio or video, but we do understand this
14 invention as being limited to, broadly,
15 audio-visual content.

16 THE COURT: Okay.

17 MR. CARDENAS: So let me I guess walk
18 through some of the courses of the
19 specification to explain our construction, and
20 probably the clearest example of that is on
21 column 4 of the patent. It gives this example
22 of a data segment that contains the word "good"
23 and a further data segment that contains the
24 word "morning." And it tells us the data
25 segment with the word "good" is output first,

1 and the data segment with the "morning" is
2 output second. This is talking about
3 content-related data segments. It's clearly
4 talking about their order and that it's got to
5 be a specific order and that order that
6 reflects the intended presentation order, and
7 that's why it's "good morning" and not "morning
8 good."

9 And this order is actually quite
10 important to how the '794 patent operates.
11 Here, I put up Figure 1 of the '794 patent. At
12 the top, we start with two data files, D1 and
13 D2. D1 is video data, and D2 is audio data.
14 And then we see that both video files are
15 fragmented by the fragmentation model to create
16 data segments. In this embodiment, the video
17 data segments, there ended up being ten of
18 them, and there ended up being five audio data
19 segments.

20 And what we see next to these data
21 segments are these R1 and this R2 with arrows
22 which I've highlighted in purple, and those
23 arrows indicate chronological order. This
24 figure, again, is telling us once these data
25 segments are created, they remain in

1 chronological order, which is what VideoLabs's
2 construction requires, and this is the setup
3 for the synchronization step, and that's why
4 this is an important limit.

5 And we get to the synchronization step at
6 the synchronization module, and it uses an
7 assignment rule to perform the synchronization,
8 and again we see these arrows along the side,
9 R1 and R2, requesting chronological order
10 because the synchronization continues to
11 reflect that intended presentation order. And
12 that, of course, makes sense. This patent,
13 what it's talking about, the problem in all
14 these embodiments is about streaming pre-made
15 content, television data streams. This isn't a
16 patent that's about creating content for the
17 first time from various samples. It's about
18 you have specific content that's pre-made, and
19 you want to transfer and then render it at a
20 user's device the way that the content was
21 meant to be presented and used and understood.

22 The claims also actually reflect this
23 relationship between the content-related and
24 the synchronization and outputting step. Starz
25 is alleging that there's a tension between our

1 construction and the acts in this method claim,
2 but that's not the case because our
3 construction doesn't require any act, doesn't
4 require any act of outputting. All it does is
5 require ordering, that the data segments are in
6 an order, so that when we get to the step of
7 sequentially outputting, that outputting occurs
8 in a chronological sequence. Our construction
9 is kind of a predicate to make this claim
10 function the way it's intended to function.

11 Unless Your Honor has any questions, I
12 have nothing further on this.

13 THE COURT: Thank you very much.

14 Mr. Harmon.

15 MR. HARMON: Thank you, Your Honor.
16 I don't have too many points to address here.
17 One of the disputes, at least as far as it
18 appears, is in terms of what VideoLabs's own
19 construction is adding into the claims. Again,
20 VideoLabs has not disputed that the express
21 definition -- an express definition was
22 provided for the term, and again, Starz has
23 offered that definition as the construction of
24 "content-related."

25 Now, VideoLabs's construction, what it

1 injects into the claim here is a particular
2 ordering of data segments that then makes the
3 rest what happens in the rest of the claim,
4 sequentially outputting according to a
5 chronological sequence, can only happen by
6 virtue of that ordering. Now, as I explained,
7 those requirements, no matter how data segments
8 are organized within a file, the claims still
9 require sequential outputting on the basis of
10 an assignment rule in their chronological
11 order. What VideoLabs's construction has done
12 here is it shifted from the focus of the method
13 claim from outputting to actually the ordering.
14 The success of the claim now depends on what
15 particular these content data segments were
16 placed in in a data file.

17 Now, the patentee could have claimed it
18 that way, but as it's claimed, what matters is
19 the outputting that achieves these results that
20 VideoLabs is now importing into the issue of
21 order.

22 THE COURT: All right. Thank you
23 very much, counsel. I think that is all of our
24 disputes today, and we are pretty much right on
25 time in terms of how much time we allocated for

1 the argument.

2 We spent a lot of time preparing for the
3 arguments today. I think we have an
4 understanding about what the parties' arguments
5 are. What I'd like to do is take a little bit
6 of time to look at my notes from prior to the
7 argument as well as the notes I made during the
8 argument today and make sure that we've
9 considered everything fully. I'd like to be
10 able to get you an answer on this today while
11 it's fresh in my mind, so if we could -- what
12 I'd like to do is come back into the
13 videoconference today at 3:00, at which time I
14 think I could be prepared to get you an answer
15 on most if not all of the terms. If it turns
16 out we need a little more time, I can have my
17 courtroom deputy e-mail local counsel, but I
18 think we should be good to go at 3:00 p.m.
19 today.

20 Is there going to be any problem with
21 keeping the same Zoom video conference link, or
22 should we make arrangements for a dial-in
23 number?

24 MS. FARNAN: No, Your Honor, it
25 should be fine to use the same link at 3:00.

1 THE COURT: Very good. And I know
2 that folks might have other conflicts,
3 especially since we're coming up on the
4 holidays, so as long as we have one attorney
5 from each side to hear the ruling as well as
6 the court reporter, that's all we'll need to
7 have present today.

8 I thank everybody for their skill and
9 preparation, and we'll talk to you later today.

10 (A recess was taken, after which the
11 following proceedings were had:)

12 THE COURT: Good afternoon, everyone.

13 MS. FARNAN: Good afternoon, Your
14 Honor.

15 THE COURT: All right. We are here
16 reconvening after a recess on a Markman hearing
17 in *Starz Entertainment versus VL Collective IP*.
18 That's Civil Action Number 21-1448-JLH. Do we
19 still have somebody on the line for Plaintiff?

20 MS. FARNAN: Yes, Your Honor, we're
21 here.

22 THE COURT: All right. And do we
23 have somebody on the line for Defendant?

24 MR. FARNAN: Yes, thank you, Your
25 Honor.

1 THE COURT: All right. Very good.
2 If you like, you can all turn off your video.
3 There's no reason we all need to be on the
4 video. In fact, I'm going to turn mine off as
5 well.

6 Okay, counsel. I'm prepared to issue a
7 ruling on claim construction disputes argued
8 today, December 16, 2022. I will not be
9 issuing a separate written opinion. I want to
10 emphasize that, while I am not issuing a
11 separate written opinion, we have followed a
12 full and thorough process before making the
13 rulings I'm about to state. We have carefully
14 reviewed the patents in suit. There was also
15 full briefing on each of the disputed terms.
16 The parties submitted their briefing in
17 accordance with my procedures, so each side had
18 the opportunity to submit two briefs, and they
19 were combined into one joint claim construction
20 brief incorporating all arguments. The
21 parties' joint claim construction chart and
22 brief also included numerous exhibits with
23 intrinsic and extrinsic evidence. Neither
24 party elected to submit expert declarations or
25 submit expert testimony.

1 Everything submitted has been carefully
2 considered. To be clear, while my oral ruling
3 will cite to the evidence that I conclude best
4 supports my constructions, my failure to cite
5 to other evidence provided by the parties does
6 not mean that I ignored or failed to consider
7 it.

8 I'm not going to read into the record my
9 understanding of the general legal principles
10 of claim construction. I set forth the legal
11 standard in my opinion in *3Shape v. Align*.
12 That's at 2020 Westlaw 2188857, and I
13 incorporate that articulation by reference.

14 Defendant has -- or excuse me -- the
15 accused infringer, who is Plaintiff in this
16 case, has also argued that one of the disputed
17 terms is indefinite. My understanding of the
18 law on indefiniteness is also set forth in the
19 *3Shape* opinion.

20 The first set of terms to be construed is
21 "wireless communication devices" and "wireless
22 device." Starz suggests that the terms should
23 be construed as "personal mobile communication
24 and computing devices, such as cellular
25 telephones, personal digital assistants (PDAs),

1 and two-way pagers." VideoLabs contents that
2 no construction is necessary, but if the Court
3 construes the term, that it should be construed
4 as "an electronic or electrical device capable
5 of remote wireless communication, including
6 internet access." The parties agree that the
7 dispute here is essentially whether the claimed
8 "wireless communication device" and "wireless
9 device" have to be personal mobile devices.

10 I considered all of the claims,
11 specification, and prosecution history relied
12 on by the parties in support of their
13 respective positions, and to me, this dispute
14 comes down to whether I agree with Starz that
15 the patentee acted as a lexicographer. In
16 support of its lexicographer argument, Starz
17 points to a portion of the specification that
18 says the following: "Personal mobile
19 communication/computing devices such as
20 cellular telephones, personal digital
21 assistants (PDAs), and two-way pagers have
22 become commonplace in many countries. These
23 devices are referred to collectively herein as
24 'mobile devices' or 'wireless devices.'"

25 This phrase does not provide a clear

1 indication that the inventor sought to limit
2 the plain meaning of the phrase "wireless
3 communication device" to only mobile devices.
4 Just as a matter of logic, saying that personal
5 mobile devices will be referred to as wireless
6 devices does not mean that the patentee defined
7 "wireless devices" to be restricted to
8 "personal mobile devices." None of the
9 evidence relied on by the parties suggests to
10 me that the person having skill in the art
11 would understand the term "wireless
12 communication devices" and "wireless device" to
13 be restricted to "personal mobile devices."

14 I reject Starz's argument that the
15 prosecution history of the '113 patent contains
16 a disclaimer, at least for the reason that the
17 alleged disclaimer was not clear and
18 unequivocal with respect to the claim terms at
19 issue.

20 VideoLabs said that the terms "wireless
21 communication devices" and "wireless device"
22 need no further construction. At oral argument
23 today, Starz agreed that if those terms are not
24 restricted to "personal mobile devices," that
25 the Court does not need to further construe

1 them. Accordingly, I will not further construe
2 them for the jury. Should VideoLabs seek
3 clarifying language that the claim terms are
4 not restricted to personal mobile devices, it
5 should discuss any proposed language with Starz
6 and the parties should provide agreed-upon
7 language to the Court.

8 The second term to be construed is
9 "implementation." Starz said it should be
10 construed as "one or more binary files or
11 binary software applications and/or executable
12 files representing a product." VideoLabs
13 contends that no construction is necessary, but
14 if the Court decides to construe the term, it
15 should be construed as "one or more binary
16 files or binaries, software files, software
17 applications, and/or executable files
18 representing a product." So the dispute here
19 is whether an implementation can include a
20 software file that is not a binary file, an
21 application, or an executable file.

22 At the outset, no one has explained to
23 the Court why or how choosing one construction
24 over the other will have any effect on the
25 litigation, but the dispute has been presented

1 to me, so I will resolve it.

2 As an initial matter, I reject Starz's
3 suggestion that a person of ordinary skill in
4 the art would not understand what a software
5 file is.

6 That aside, it seems to me that the term
7 "binary file" in one sense might encompass all
8 files in a modern computer system. The parties
9 don't seem to be using it in that sense,
10 however, since their respective proposals go on
11 to specify software applications and executable
12 files. In this situation, given that neither
13 side provided any expert declaration or
14 testimony on this issue, for the reasons
15 discussed during my interchange with counsel at
16 the hearing today, I am unpersuaded that a
17 person of skill in the art reading this patent
18 would interpret the term "implementation" to
19 exclude a software file representing a product
20 that is not understood to be a binary file
21 application or executable file. For that
22 reason, the Court will adopt VideoLabs'
23 proposed construction.

24 The third term to be construed or set of
25 termed to be construed is "content," "digital

1 content," "product," and "digital product." In
2 the briefing, Starz contended that the phrases
3 should be construed as "software and/or data
4 embodying a file for purchase by a wireless
5 services subscriber and/or telecommunications
6 subscriber." VideoLabs said that no
7 construction was necessary, but if the Court
8 wanted to construe the terms, they should be
9 construed as "software and/or data embodying a
10 file for delivery or purchase by a customer."

11 Leading up to the hearing today, there
12 were two disputes. The first one had to do
13 with whether the construction should refer to a
14 customer or a telecommunications subscriber.
15 The parties have now agreed to resolve that
16 dispute by omitting reference to either, so the
17 only remaining question is whether the term
18 should be construed according to Starz's
19 proposal as "software and/or data embodying a
20 file for purchase" or VideoLabs's proposal of
21 "software and/or data embodying a file for
22 delivery or purchase." That dispute is,
23 essentially, whether the claimed terms have to
24 be content or a product that is for purchase.

25 As an initial matter, I'm unpersuaded by

1 Starz's argument that the word "product"
2 generally implies a purchase or an exchange of
3 consideration. I've also considered all of the
4 intrinsic evidence relied on by the parties.
5 Starz points to lines in the specification
6 discussing how the claimed invention
7 facilitates making products available for
8 purchase. But just because the specification
9 contemplates content being purchased, that does
10 not mean that the claims are limited to devices
11 and methods that require a purchase. And the
12 fact is that the claimed methods and systems do
13 not require a purchase either expressly or
14 implicitly.

15 Accordingly, I agree with VideoLabs that
16 it would be inappropriate to include the
17 requirement that the claimed "content,"
18 "digital content," "product," and "digital
19 product" have to be for purchase. Those terms
20 will be construed in accordance with
21 VideoLabs's alternative proposal as "software
22 and/or data embodying a file for delivery or
23 purchase by a customer."

24 The fourth term to be construed is
25 "download." Starz suggests that "download"

1 should be construed in accordance with its
2 plain and ordinary meaning, which Starz asserts
3 is "copy and store in memory of the terminal
4 for subsequent use." VideoLabs says that no
5 construction is necessary but that if the Court
6 chooses to construe the term, VideoLabs
7 suggests "transfer to the terminal."

8 The main dispute between the parties and
9 the dispute that the Court is going to resolve
10 today is whether, as Starz suggests, a complete
11 copy of the file must be stored in the terminal
12 for subsequent use or whether, as VideoLabs
13 suggests, the term "download" is broad enough
14 to encompass a situation where the file is
15 transferred to the terminal but a complete copy
16 of the file is never stored in the memory of
17 the terminal.

18 Neither side elected to submit expert
19 declarations, which would have assisted the
20 Court in confirming the understanding of a
21 person having skill in the art at the relevant
22 time. For what it's worth, the Court's
23 understanding of the term "download" is
24 consistent with Starz's, but even putting the
25 Court's understanding aside entirely and going

1 just based on the intrinsic evidence, having
2 carefully reviewed the patent, I agree with
3 Starz that the patentee's description of the
4 invention as set forth in the specification and
5 claims appears to have assumed that the act of
6 downloading a file to a terminal would result
7 in a copy of that file being stored in the
8 memory of the terminal.

9 I've carefully considered VideoLabs's
10 argument regarding the distinction in the
11 specification between "downloading" and
12 "storing." As discussed during the oral
13 argument today, the fact that the patentee
14 distinguishes between the concepts of
15 "downloading" and "storing" does not mean that
16 a person having skill in the art would not
17 understand that the act of downloading results
18 in a full copy of the file being put into the
19 memory of the terminal. The fact that the file
20 can then be stored in the memory of the
21 terminal for some amount of time does not
22 change the fact that the act of downloading is
23 the act that put the file there.

24 To be clear, I do not understand Starz's
25 inclusion of the words "store for subsequent

1 use" in its construction to mean that the file
2 has to be stored for a lengthy period of time.
3 Rather, I understand that language to mean that
4 the file is placed in memory such that it can
5 be used later in time.

6 The Court is also not resolving today
7 whether the term "download" includes a
8 situation where a complete copy of the file is
9 downloaded to the terminal and thus is
10 available for subsequent use, even though the
11 user is able to start watching or using the
12 file before the download is complete. At this
13 point, the Court assumes that situation falls
14 within Starz's proposed construction.

15 For these reasons, the Court will
16 construe the term "download" in accordance with
17 Starz's proposal to mean "copy and store in
18 memory of the terminal for subsequent use."

19 The fifth term to be construed is
20 "assignment rule." Neither side argued that
21 "assignment rule" is a means-plus-function
22 limitation.

23 Starz arguing that "assignment rule" is
24 indefinite because it fails to inform with
25 reasonable certainty those skilled in the art

1 about the scope of the invention. From the
2 briefing, I took Starz's argument to be as
3 follows: Since independent Claims 1 and 9
4 refer to "assignment rule" but dependent Claims
5 16 and 17 refer to a "pre-definable assignment
6 rule," the assignment rule in Claims 1 and 9
7 must be broader than a pre-definable assignment
8 rule. And because the specification does not
9 describe any kind of assignment rule other than
10 a pre-definable one, the phrase fails to
11 provide clear guidance as to the outer bounds
12 of "assignment rule," and is therefore
13 indefinite.

14 Starz's argument, as it was laid out in
15 the briefing, relies on the doctrine of claim
16 differentiation, which refers to the
17 presumption that an independent claim should
18 not be construed as requiring a limitation
19 added by a dependent claim. Among the problems
20 with Starz's indefiniteness argument is that it
21 treats the doctrine of claim differentiation as
22 a hard and fast rule, but the doctrine of claim
23 differentiation is not an absolute rule. In
24 other words, it's possible that the term
25 "assignment rule," in the context of the

1 invention, would be understood by a person
2 having skill in the art to be a pre-defined
3 assignment rule.

4 Starz's briefing did not appear to
5 suggest that a person having skill in the art
6 would not understand what is meant by a
7 pre-defined assignment rule. It's also person
8 a having skill in the art could tell the Court
9 how they would understand and that they would
10 understand that it is possible for the claimed
11 assignment rule to not be pre-defined. But
12 nobody submitted expert testimony regarding how
13 such a person would understand "assignment
14 rule."

15 So all of this is to say that to the
16 extent that Starz's argument relies on the
17 doctrine of claim differentiation, I can't find
18 on this record that Starz has proven that
19 assignment rule is indefinite by clear and
20 convincing evidence. At oral argument today,
21 Starz suggested that a person having skill in
22 the art would not be able to understand the
23 scope of a pre-defined assignment rule. Even
24 if that argument were appropriately raised at
25 this stage, I cannot find on this record that

1 Starz has proven by clear and convincing
2 evidence that a person having skill in the art
3 would not be able to understand the scope of
4 the phrase "pre-defined assignment rule."

5 Starz has not proposed an alternative
6 construction of "assignment rule."

7 VideoLabs proposes the term be construed
8 as "assignment rule for assigning each one of
9 the content-related second data segments to one
10 of the content-related first data segments
11 wherein the assignment is not performed by
12 using exact timing information or the data
13 segments, e.g., by using data segment time
14 stamp information."

15 In other words, VideoLabs says that the
16 term "assignment rule" covers any assignment
17 rule except for those that use exact timing
18 information for the data segment. In support
19 of this carveout, VideoLabs argues that the
20 patentee disclaimed assignment rules that used
21 exact timing information, including those that
22 use data segment time stamp information.

23 It's unusual for a patentee to be
24 invoking the doctrine of prosecution
25 disclaimer. For purposes of the argument, I'll

1 assume that there might be a circumstance where
2 a patentee can invoke prosecution disclaimer
3 and nevertheless reject VideoLabs's proposal.

4 As an initial matter, it's not entirely
5 clear what VideoLabs means by "exact timing
6 information." VideoLabs' proposed construction
7 does suggest that "exact timing information"
8 includes but is not limited to the use of data
9 segment time stamp information, but the
10 reference in dependent Claims 20 and 21 to the
11 assignment rule not being based on a time stamp
12 suggests that the patentee understood that the
13 phrase "assignment rule" includes assignment
14 rules that can be based on a time stamp.

15 I've also carefully reviewed the portions
16 of the prosecution history relied on by
17 VideoLabs, including the patentee's arguments
18 regarding the *Shin* and *Rosenau* references, and
19 I'm up persuaded there was a clear and
20 unmistakable disclaimer of all assignment rules
21 that perform assignments by using exact timing
22 information. Without the exact timing
23 information carveout, VideoLabs' proposal is
24 essentially the same as the claim language, so
25 the Court declines to construe this term

1 further.

2 The sixth term and last term to be
3 construed is "content-related data segments."
4 Starz proposes to construe the term as
5 "segments of content data that have a
6 syntactical meaning within the respective data
7 file." In support of its construction, Starz
8 contends the patentee acted as a lexicographer,
9 and it points to a line in the specification
10 which says the term "content-related" is
11 understood to mean that first and second data
12 segments have a syntactical meaning within the
13 respective data file, such as, e.g., a
14 plurality of succeeding second data segments
15 represent the speech signal of a specific
16 speaker within a dialogue sequence.

17 VideoLabs agrees with Starz that the
18 patentee acted as its own lexicographer, but
19 VideoLabs wants the Court to explain what that
20 definition means in a way that the jury can
21 understand it. I take VideoLabs's point that
22 the jury might have confusion over what it
23 might mean for segments of content data that
24 have a syntactical meaning within the
25 respective data file. The problem I have with

1 VideoLabs's proposed construction is that it
2 incorporates language like "intended
3 presentation order" and "rendered sequentially"
4 that, for various reasons, may not be
5 appropriate.

6 Starz proposed some language for the
7 first time during the hearing today to further
8 define the alleged lexicographical definition,
9 but I was not persuaded that Starz' proposal
10 was appropriate either, at least for the reason
11 that it appeared to refer to segments of data
12 having association with segments of data from
13 another file, while the claim term might
14 require segments of data having a syntactical
15 meaning within the respective data file.

16 My concerns with both sides' proposals
17 are compounded by the fact that neither side
18 was able to articulate for the Court how the
19 respective proposals would resolve a dispute
20 over claim scope that is relevant to in
21 infringement of validity issue in this case.
22 In other words, I'm not really sure what
23 dispute I'm resolving, so what I'm going to do
24 is this: I'm going to adopt Starz's proposal,
25 which is the express definition provided in the

1 specification. My decision is without
2 prejudice to either side raising the issue of
3 what that definition means in conjunction with
4 its summary judgment briefing, which at that
5 point will hopefully shed some light for the
6 Court on what the dispute is here.

7 And if it appears at that point in time
8 that we have an *O2Micro* problem, that is, a
9 dispute over the meaning of a claim term that
10 is relevant to an issue in the case, the Court
11 will resolve it at that time or at such time
12 adds that case is referred to the jury.

13 That concludes my ruling. I'd like the
14 parties to work together to get the Court's
15 constructions into the form of an order with a
16 claim chart on it that the Court can sign, so
17 I'll order that on or before January 6th, the
18 parties should submit to the Court a proposed
19 order reflecting the rulings today.

20 Any questions or comments from counsel
21 for Plaintiffs?

22 MR. CAIXEIRO: No, Your Honor. Thank
23 you very much for your attention today.

24 THE COURT: Thank you.

25 Any questions for comments from counsel

1 for Defendants?

2 MR. FARNAN: No, Your Honor. Thank
3 you.

4 THE COURT: All right. Thanks very
5 much, everybody. Have a great weekend and a
6 great holiday season. Take care.

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C E R T I F I C A T E

STATE OF DELAWARE)
) ss:
COUNTY OF NEW CASTLE)

I, Deanna L. Warner, a Certified Shorthand Reporter, do hereby certify that as such Certified Shorthand Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in Case Number 21-1448-JLH, *STARZ ENTERTAINMENT, LLC, et al. Vs. VL COLLECTIVE IP, LLC, et al.*, heard on December 16, 2022.

I further certify that a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 114 typewritten pages, is a true copy of said **MARKMAN HEARING.**

SIGNED, OFFICIALLY SEALED, and FILED
with the Clerk of the District Court, NEW CASTLE County, Delaware, this 19th day of December, 2022.



Deanna L. Warner, CSR, #1687
Speedbudget Enterprises, LLC

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DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

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202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

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202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

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DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

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202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

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202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

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