

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

SAFECAST LIMITED, <i>Plaintiff,</i> v. AT&T CORPORATION, <i>Defendant.</i>	Case No. 6:22-cv-00676-ADA JURY TRIAL DEMANDED
SAFECAST LIMITED, <i>Plaintiff,</i> v. GOOGLE LLC, <i>Defendant.</i>	Case No. 6:22-cv-00678-ADA JURY TRIAL DEMANDED
SAFECAST LIMITED, <i>Plaintiff,</i> v. MICROSOFT CORPORATION, <i>Defendant.</i>	Case No. 6:22-cv-00983-ADA JURY TRIAL DEMANDED
SAFECAST LIMITED, <i>Plaintiff,</i> v. VERIZON COMMUNICATIONS, INC., <i>Defendant.</i>	Case No. 6:22-cv-00683-ADA JURY TRIAL DEMANDED

DEFENDANTS' OPENING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Defendants AT&T Corp. (“AT&T”), Google LLC (“Google”), Microsoft Corp. (“Microsoft”), and Verizon Communications Inc. (“Verizon”) propose constructions for six disputed terms of asserted U.S. Patent No. 9,392,302 (the “’302 Patent”): two terms that were defined by lexicography during prosecution, three terms reciting “means” for performing various functions, and one term that has a common meaning that has long been recognized in the relevant art and even by the Supreme Court. Of these terms, proper constructions of at least the first three terms would be case-dispositive.

II. SUMMARY OF ’302 PATENT

The ’302 Patent, titled “System for providing improved facilities in time-shifted broadcasts,” describes improving on prior art personal video recorders (“PVRs”) by “enabl[ing] the automatic exclusion of advertisements that should not be shown at the time the programme is being viewed when time-shifted.” ’302 Patent (Ex. A) at Cover, 2:59–62.

When a television viewer records a program (including interleaved advertisements) using a PVR and plays that program back at a later time, the advertisements might no longer comply with applicable time regulations issued by a broadcasting authority. For example, the regulations could prohibit an advertisement for alcohol recorded during a late-night television program if the program is viewed during the daytime, when children may be present. The patent addresses the problem by checking headers on the recorded advertisement to apply rules based on time-based regulations. If there are no regulations, the PVR shows the originally broadcast advertisement at a shifted time. If there are restrictions, the PVR will choose a different advertisement to display during time-shifted viewing of the program. The claimed PVR has databases that store recorded programs, ads, and rules that relate to local broadcasting time regulations, as shown in Fig 5 of the patent. *See id.* at 4:57–62, 4:67–5:3, 5:14–24, FIG.5. The PVR applies the rules to restrict ads

based on the real time of day at playback. *Id.*, 5:14–24, 6:40–62.

III. LEGAL STANDARD

“[C]onstruction of a patent claim is a matter of law exclusively for the court” that should not be left to the jury. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977 (Fed. Cir. 1995), *aff’d*, 517 U.S. 370 (1996). Patentees often use terms idiosyncratically, and the meaning of those terms should be determined based on the specification, prosecution history, and extrinsic evidence. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). When parties dispute the scope of claim terms, it is error to “determin[e] only that the terms should be given their plain and ordinary meaning.” *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1319 (Fed. Cir. 2016).

The use of the word “means” in a claim creates a rebuttable presumption that a term is a means-plus-function element under 35 U.S.C. § 112 ¶ 6.¹ *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). Once the Court has determined that a term is a means-plus-function element under § 112 ¶ 6, the scope of the element must be determined by “identifying the corresponding structure, material, or acts described in the specification to which the claim term will be limited.” *Robert Bosch, LLC v. Snap-On Inc.*, 769 F.3d 1094, 1097 (Fed. Cir. 2014). If the Court cannot identify “any corresponding structure, material, or acts described in the specification, the claim term is indefinite.” *Id.* (internal quotations omitted).

¹ The ’302 Patent is a pre-AIA patent.

IV. TERMS FOR CONSTRUCTION²

A. Terms 1 and 2: “Local Broadcasting Regulation[s]” and “Local Broadcasting Time Regulation Laid Down by the Broadcasting Authority” (Claims 1, 3, 12) [all Defendants]

Term	Defendants’ Construction	SafeCast’s Construction
“local broadcasting regulation”	“regulations/laws/ordinances created by a regulatory agency with regard to broadcast content”	Plain and ordinary meaning; no construction necessary
“local broadcasting time regulation laid down by the broadcasting authority”	“time-related ³ regulations/laws/ordinances created by a regulatory agency with regard to broadcast content”	Plain and ordinary meaning; no construction necessary

Defendants propose construing two related terms—“local broadcasting regulation” and “local broadcasting time regulation laid down by the broadcasting authority”—based on the Applicant’s definition of those terms during prosecution. SafeCast, in contrast, seeks to impermissibly ignore its own definition and attempts to broaden the claim to cover advertiser-specified criteria that are not “regulations,” which the Applicant disclaimed during prosecution. Ex. B1 at 001; Ex. B2 at 001; Ex. B3 at 001; Ex. B4 at 001.

The Applicant gave these terms a particular meaning in prosecution to secure allowance of its patent. Specifically, in response to a prior art rejection, the Applicant affirmed that the “correct” definition of “local broadcasting regulation” is “regulations/laws/ordinances created by a regulatory [agency] with regard to broadcast content.” Ex. F at 004.

² Different claims are asserted against each Defendant. The Defendant(s) proposing construction of each term below are indicated in italics in the header for the term.

³ The word “time” was added during prosecution to limit the broadcasting regulations to “time-related” regulations. Ex. D at 002, 004–005. Accordingly, Defendants added “time-related” to the Applicant’s lexicographical definition of the broadcasting regulation term to reflect the claim as issued. Defendants’ proposal also is supported by the ’302 Patent’s specification. ’302 Patent at 1:19-26.

The Examiner is indeed correct in the presumption that Applicant intended the term “local broadcasting regulation” to refer to regulations/laws/ordinances created by some regulatory with regard to broadcast content. The Examiner’s example of the Federal Communications Commission and 47 CFR § 73.3999, being an Enforcement of 18 USC 1464 putting restrictions of broadcast transmission of obscene and indecent materials, where paragraph (b) specifies restrictions on times of day during which indecent material may or may not be broadcast, is an example of exactly the kind of regulation that Applicant wishes to refer to in claim 1. Other examples are given in the specification, for example at page 1 lines 14-27.

In parallel, the Applicant amended the claims to reinforce that the “local broadcasting regulation” is “laid down by the broadcasting authority.” *Id.* at 002, 004. The Applicant also amended certain instances of the term to specify that the regulation is a “local broadcasting time regulation laid down by the broadcasting authority” to overcome a prior art rejection. Ex. D at 002.

advertisement supply means to supply advertisements within the periodic breaks, each advertisement having associated therewith a header related to a local at least one broadcasting time regulation which restricts the time of day at which said advertisement may be shown;

Defendants’ proposed constructions are verbatim from the prosecution history statements.

1. The Applicant Defined “Local Broadcasting Regulation” And Added “Laid Down By A Broadcasting Authority” During Prosecution; Defendants’ Construction Adopts That Definition Verbatim

The term “local broadcasting regulation” was defined by the Applicant during prosecution to overcome prior art in response to rejections by the Examiner. The then-pending claims recited, in relevant part, a “system for automating compliance with local broadcasting regulations applicable to advertisements.” Ex. D at 002. The Examiner issued a final rejection of the claims based on prior art reference Poel (GB Patent No. 2464630), which describes supplying ads for a TV program based on an advertiser’s date, time, and target audience criteria, including codes that prevent showing the ads at certain times. Ex. E at 006, 0019–0020. The Examiner explained that, while the Applicant appeared to intend “local broadcasting regulation” to have a narrower meaning

of “regulations/laws/ordinances created by some regulatory agency with regard to broadcast content” as described in the specification, the Examiner applied a broader scope that included advertiser-set criteria under the broadest reasonable interpretation standard. *Id.* at 0018–0019.

In response, the Applicant disavowed the broadest reasonable interpretation and confirmed the narrower definition, explaining that “[t]he Examiner is indeed *correct in the presumption* that *Applicant intended the term ‘local broadcasting regulation’ to refer to regulations/laws/ordinances created by some regulatory [agency]*⁴ with regard to broadcast content,” and amended the claims to reinforce the idea that the local broadcasting regulations must be “laid down by a broadcasting authority.” Ex. F at 004. Defendants’ proposed constructions adopt the Applicant’s lexicography. Defendants’ constructions are consistent with how a POSITA would understand the terms based on review of the prosecution history, specification, and the terms themselves. This meaning should govern because it indicates “how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Phillips*, 415 F.3d at 1317.

The Applicant further buttressed this definition during prosecution by citing examples of the claimed “local broadcasting regulation” that all follow Defendants’ construction. Specifically, the Applicant stated, “*Federal Communications Commission and 47 CFR § 73.3999*, being an Enforcement of 18 USC [§] 1464 putting restrictions of [sic] broadcast transmission of obscene and indecent materials, where paragraph (b) specifies restrictions on times of day during which indecent material may or may not be broadcast, *is an example of exactly the kind of regulation*

⁴ The Applicant’s remarks contain a typographical error that omitted the word “agency” from the definition. But the Applicant’s intent to say “regulatory agency” is clear because the Applicant was confirming the Examiner’s suggestion, which said “regulatory agency,” and because the Applicant’s statement is grammatically incorrect and does not make sense without the word “agency.” Ex. E at 0019–0020; Ex. F at 004.

that Applicant wishes to refer to in claim 1.” Ex. F at 004. That example is a regulation created by the regulatory agency (the FCC) that regulates broadcast content by “putting restrictions of [sic] *broadcast transmission* of obscene and indecent materials.” *Id.*

The Applicant also pointed to “[o]ther examples [] given in the specification, for example at page 1 lines 14-27.” *Id.*; *see also* Ex. C at 001 lines 14–27 (“In many countries there are regulations laid down by the broadcasting authorities which specify the minimum time between advertising breaks.”). The patent specification also describes that “[i]n the UK for example, if the advertisement is advertising alcoholic drinks containing more than 1.2% alcohol and the advertising regulator responsible is OFCOM[,] then under the Broadcast Committee of Advertising Practice Rules on Scheduling of Television Advertisement the advertisement may not be shown at a time when children under 10 are likely to be viewing—i.e. before 7.30pm, sometimes referred to as the ‘watershed.’” ’302 Patent at 1:19-26. This time-based regulation/law/ordinance was also created by a regulatory agency—OFCOM. *Id.* at 001 lines 19–26; *see also* Ex. G.

2. SafeCast’s Proposal Of Plain And Ordinary Meaning Leads To Error

SafeCast contends that these terms need no construction and proposes that the Court simply state that these terms have their plain and ordinary meaning. But the Federal Circuit has held that a “claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history.” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). Faced with the Examiner’s rejection over very close prior art, the SafeCast Applicant acted as his own lexicographer and gave these terms a particular meaning—“[time-related] regulations/laws/ordinances created by a regulatory agency with regard to broadcast content”—in the context of the patent claims. Ex. F at 004. In defining the terms to have this particular meaning,

the Applicant expressly disavowed an interpretation according to which advertiser-specified criteria could qualify as a local broadcasting regulation. Ex. E at 006, 0019; Ex. F at 004.

Despite this disavowal, SafeCast’s infringement contentions attempt to recapture disavowed claim scope—advertiser-specified criteria. *See e.g.*, Ex. B1 at 001 (alleging “AT&T’s AdWorks provides compliance with local broadcasting regulation in a ‘privacy-compliant manner.’”); Ex. B2 at 001 (alleging “Google Ads provides Ad Scheduling services, which allow advertisers to ‘specify certain hours or days of the week when [they] want [their] ads to show’”); Ex. B3 at 001 (alleging “Microsoft provides compliance with various local broadcasting regulations, including but not limited to, online advertising self regulatory agencies”); Ex. B4 at 001 (alleging “Verizon’s Content Policy states that ‘all advertisements must comply with applicable industry regulations.’ Additionally, Verizon ensures ‘compliance with the law’ by ‘exercising broad discretion over our choice of brands and companies that advertise on our platforms.’”). The Federal Circuit in *Fantasy Sports Props., Inc. v. Sportsline.com, Inc.* rejected a patentee’s attempt to do the very same thing, holding that the patentee “cannot now be heard to argue” a broad construction of the term “bonus points” because patentee acquiesced in the examiner’s narrow interpretation to distinguish the claims from prior art. 287 F.3d 1108, 1114–15 (Fed. Cir. 2002). Thus, while Defendants contend that the applicant’s lexicography is consistent with how a POSITA would understand the words of the claim limitations using normal parlance, here, a construction according to the lexicography is appropriate and necessary to resolve the parties’ dispute.

B. Means-Plus-Function Terms

1. The “Means” Terms Are Means-Plus-Function Terms

The asserted claims include several terms that explicitly recite “means” and functions

performed by those means. The terms are thus presumptively means-plus-function terms. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015); 35 U.S.C. § 112 ¶ 6. The parties agree these “means” terms are means-plus-function elements and that their constructions should identify the corresponding function(s) and structure(s) of the “means.” The parties further agree on the constructions for several means-plus-function terms, leaving only “control means,” “programme supply means,” and “advertisement means” in dispute. *See* Ex. L at 2–3 (agreeing to Defendants’ proposed constructions for “rules database means,” “data storage means,” “input connection means,” and “output means”); *id.* at 1 (SafeCast’s proposed constructions for the “control means,” “programme supply means,” and “advertisement supply means”).

Defendants respectfully request the Court adopt their proposed constructions below.

2. Term 3: “Control Means . . .” (Claims 1, 2, 8, 9, 12) [all Defendants]

Defendants’ Construction ⁵	SafeCast’s Construction
<u>Cls. 1 and 12:</u> <u>Functions:</u> “read said first field and said clock signal and said rules database and [] apply said local broadcasting time regulation to each advertisement before said advertisement is shown; [and] update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing” <u>Structure:</u> None disclosed for at least function of “update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing” and, therefore, indefinite <u>Cl. 2:</u> <u>Functions:</u>	<u>Function:</u> read said first field and said clock signal and said rules database and to apply said local broadcasting time regulation to each advertisement before said advertisement is shown <u>Structure:</u> the personal video recorder (PVR) at 4:42–5:29; 6:4–12

⁵ The “control means” limitations in dependent claims 2, 8 and 9 are indefinite for the same reasons as claim 1 on which they depend. *Noah Sys.*, 675 F.3d at 1319. Moreover, SafeCast has not even proposed corresponding structure for performing the functions in these dependent claims. Accordingly, SafeCast has waived any argument that structure for the “control means” of the dependent claims is provided in the specification. Nevertheless, Defendants reserve the right to respond to any new argument raised by SafeCast in its response brief.

In addition to the three functions of the “control means” in Claim 1, “check the keyword against the rules database during application of said local broadcasting time regulation to said advertisement”

Structure:

None disclosed for at least function of “update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing” and, therefore, indefinite

Cl. 8:

Functions:

In addition to the three functions of the “control means” in Claim 1, “when the application of said local broadcasting time regulation to a particular advertisement indicates that showing the particular advertisement would violate the local broadcasting time regulation, search the advertisements stored in the advertisement supply means until either an advertisement is found that does not violate the local broadcasting time regulation or it is determined that no advertisement stored in the advertisement supply means is suitable for showing under the local broadcasting time regulation”

Structure:

None disclosed for at least function of “update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing” and, therefore, indefinite

Cl. 9:

Functions:

In addition to the three functions of the “control means” in Claim 8, “show during time-shifted viewing of the programme a mix of advertisements that were received during the live broadcast of the programme and advertisements that were received other than in the live broadcast of the programme being shown during time-shifted viewing”

Structure:

None disclosed for at least function of “update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing” and, therefore, indefinite

A “control means” for performing specified functions is claimed in asserted claims 1, 2, 8, 9, and 12, where claims 1 and 12 are independent claims, and claims 2, 8, and 9 depend from claim

1. The parties agree that the “control means . . .” is a means-plus-function term that must be construed by identifying the functions that it performs and the structure for performing all those functions. Because the specification does not describe at least one of the claimed functions (“updat[ing] the second field in the header of said advertisement . . .”), much less the structure for performing that function, claims 1, 2, 8, 9 and 12 should be found indefinite for lack of disclosed corresponding structure. *See Noah Sys., Inc. v. Intuit Inc.*, 675 F.3d 1302, 1318–19 (Fed. Cir. 2012) (“[W]here a disclosed algorithm supports some, but not all, of the functions associated with a means-plus-function limitation, we treat the specification as if no algorithm has been disclosed at all.”). If the Court adopts Defendants’ construction of this term, all asserted claims would be invalid, which would be case-dispositive, and the Court could choose to defer construing the remaining means-plus-function limitations until such time as may be necessary.

a) The Functions of the “Control Means . . .” Limitation

Independent claims 1 and 12 each recite “control means arranged to” followed by a series of three functions to be performed by the control means:

- claims 1, 12: “[1] read said first field and said clock signal and said rules database and [2] apply said local broadcasting time regulation to each advertisement before said advertisement is shown; . . . [3] update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing”;

Dependent claims 2, 8, and 9 add more functions to be performed by the “control means”:

- claim 2: “checks the keyword against the rules database . . .”;
- claim 8: “. . . search the advertisements stored in the advertisement supply means until either an advertisement is found that does not violate the local broadcasting time regulation or it is determined that no advertisement stored in the advertisement supply means is suitable for showing under the local broadcasting time regulation”; and
- claim 9: “show during time-shifted viewing of the programme a mix of advertisements. . .”

Defendants’ proposed functions of the “control means” are exactly as they are recited in claims 1, 2, 8, 9, and 12. *See* Turnbull Decl. ¶¶ 42, 43, 47, 56; *see also Lockheed Martin Corp. v.*

Space Systems/Loral, Inc., 324 F.3d 1308, 1319 (Fed. Cir. 2003) (“The function of a ‘means-plus-function’ claim must be construed to include the limitations contained in the claim language.”); *Cellular Commc’ns Equip. LLC v. HTC Corp.*, No. 6:13-CV-507, 2015 WL 1048890, at *9 (E.D. Tex. Mar. 9, 2015) (construing “processing means are also arranged to set for the measurement pattern definition a delay according to the measurement pattern definitions”).

Among other functions, claims 1 and 12 require the “control means” to “[3] update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing.” SafeCast’s construction improperly omits this third recited function of the “control means,” which was added during prosecution “[i]n the interest of expediting allowance” to “make[] explicit that the header itself is modified.” Ex. K at 007. The Applicant added this third function to overcome prior art reference Poslinski, which the Applicant argued “makes no suggestion that the stored commercial data is altered” and instead has counters in an “additional database” rather than “in the headers of the commercials themselves.” *Id.*

b) The Specification Does Not Disclose Corresponding Structure that Performs the Claimed Functions

As the next step, “the Court must determine what structure, if any, disclosed in the specification corresponds to the claimed function.” *Williamson*, 792 F.3d at 1351. If the Court cannot identify “any corresponding structure, material, or acts described in the specification, the claim term is indefinite.” *Robert Bosch*, 769 F.3d at 1097 (internal quotations omitted).

For at least the function of “update[ing] the second field . . . during time-shifted viewing,” SafeCast cannot meet its burden to identify sufficient structure for “control means” because the specification does not discuss updating an advertisement header (in any manner), much less disclose structure sufficient for performing that function. Turnbull Decl. ¶¶ 49-51, 54-56. SafeCast proposes the structure of the “control means” is “the personal video recorder (PVR)” at lines 4:42–

5:29; 6:4–12 of the patent, but the patent does not describe the PVR or any other structure as performing the “update[ing]” function.

Defendants’ expert, Dr. Turnbull, who has three decades of experience in software engineering and design, reviewed the ’302 Patent disclosure for any structure that updates an advertising header and found none. Turnbull Decl. ¶¶ 21, 49–51. As explained by Dr. Turnbull, the ’302 Patent does not discuss or describe updating a header field; *e.g.*, to keep a tally of the number of times an advertisement has been shown in time-shifted viewing. *Id.* ¶¶ 49–50. The closest disclosure in the ’302 Patent is Figure 8, which depicts a flowchart of the steps taken in the PVR discussed in the specification. Notably absent from that flowchart is any discussion of updating an advertisement header. *Id.* ¶¶ 49–50; *see also* ’302 Patent.

In fact, the only time “update” is used in the specification is with respect to “update[ing] the viewer loyalty points register 156.” *See* ’302 Patent at Fig. 8 (Step 106) and 7:21–22; Turnbull Decl. ¶ 50. The loyalty point register is neither an advertisement header, nor related to the number of times an advertisement has played in time-shifted viewing. *Id.* Instead, “[t]he viewer may be awarded loyalty points for making key depressions in Interactive advertisements, which are convertible into money or money’s worth (*e.g.* pay-per-view programmes) upon redemption by the viewer.” *See* ’302 Patent at 6:18–22. In other words, updating an advertising header, which is required by all asserted independent claims, is not discussed in the specification.

Therefore, the specification does not disclose any structure “clearly linked” to the claimed function that can be a “corresponding structure” under §112, ¶ 6; *see B. Braun Med., Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed. Cir. 1997); *Noah Sys.*, 675 F.3d at 1318. SafeCast also fails to identify any structure corresponding to the additional functions recited in claims 2, 8, and 9. Because the ’302 patent does not disclose sufficient structure to perform the functions of the

“control means,” the asserted claims are indefinite.

c) SafeCast’s Proposed Function Is Inconsistent with the Claims and Its Proposed Structure Is Insufficient to Perform the Claimed Functions

SafeCast’s proposed construction is flawed for two reasons. First, SafeCast fails to account for the additional four recited functions of the control means: the last function in the wherein clause of claim 1 (“wherein the control means is further arranged to . . .”) and the three functions in dependent claims 2, 8 and 9. Each of these functions is unequivocally claimed and must be accounted for with a disclosure of corresponding structure in the ’302 Patent specification. *See, e.g., Noah Sys.*, 675 F.3d at 1319; *Spa Syspatronic AG v. United States*, 117 Fed. Cl. 375, 390 (2014). Accordingly, the Court should reject SafeCast’s proposed recitation of the claimed functions. And for this same reason, the Court should reject Plaintiff’s proposed construction because it does not identify any structure for performing the unnamed functions in its proposal.

Second, Plaintiff identifies “the personal video recorder (PVR) at 4:42–5:29; 6:4–12” as the proposed structure, but neither a generic PVR nor the disclosure at “4:42–5:29; 6:4–12” recites structure for performing the claimed functions. In fact, the ’302 Patent describes PVRs as prior art: “As shown in FIG.1, a known PVR 10 contains a computer type hard disc 12 and twin signal decoders/tuners 14.” ’302 Patent at 1:61-62. The ’302 Patent provides half a column of detail regarding known functionality and components of prior art PVRs. *Id.* at 1:61-2:41. Certainly SafeCast cannot be arguing that the allegedly novel functions of the asserted claims were performed by prior art PVRs. In any case, the patent’s discussion of prior art PVRs does not identify structures for performing functions such as “update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing,” as claimed in claim 1.

Likewise, the specification at 4:42–5:29; 6:4–12 does not identify corresponding structure for performing the claimed functions. At 4:42–55, the specification discusses basic components of the PVR that are elsewhere described as components of prior art PVRs. At 4:56–5:3, the specification discusses additional components of the PVR, but without any reference to the claimed functions. At 5:4–29, the specification discusses certain functional operations of the PVR, but again without any reference to specific structure. Instead, this part of the specification treats the PVR as a black box. *Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1383 (Fed. Cir. 2009) (“The ACM is essentially a black box that performs a recited function. But how it does so is left undisclosed.”); *see also Aristocrat Techs. Austl. Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008) (holding “microprocessor-based gaming machine with ‘appropriate programming’” was insufficient structure for means-plus-function term). Finally, at 6:4–12, the specification describes fields associated with a header that can be used to ensure time of day restrictions are applied and followed, but this excerpt does not identify any structure for performing the actual claimed functions. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1367 (Fed. Cir. 2008) (means-plus-function term “is invalid if the specification fails to disclose an algorithm for performing the claimed function.” (citing *Aristocrat*, 521 F.3d at 1337–38)).

Accordingly, Plaintiff’s reference to the PVR is insufficient. Rather, a POSITA would understand that the disclosed PVR would need to be programmed to perform the function of “update[ing]” the second field of the advertisement header, among other functions. Turnbull Decl. ¶ 56. The control means is thus indefinite because the disclosure of the ’302 Patent does not encompass the software necessary to perform the claimed functions. *See Aristocrat Techs.*, 521 F.3d at 1337 (“the proper inquiry for purposes of section 112 paragraph 6 analysis is to ‘look at the disclosure of the patent and determine if one of skill in the art would have understood that

disclosure to encompass software [to perform the function] and been able to implement such a program, not simply whether one of skill in the art would have been able to write such a software program.”) (citing *Medical Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1212 (Fed. Cir. 2003)). Because the specification lacks any algorithm or other structure for performing these functions of the “control means,” a POSITA would not have reasonable certainty regarding the scope of the claimed invention.

3. Terms 4 and 5: “Programme Supply Means” and “Advertising Supply Means” (Claims 1, 7, 8, 9) [All Defendants]

Term	Defendants’ Construction	SafeCast’s Construction
programme supply means	Function: to supply broadcast digital video/audio programmes Structure: hard disc 62 in PVR 60, containing programme database 80	Function: supply broadcast digital video/audio programmes having therein periodic breaks for the insertion of advertisements Structure: personal video recorder (PVR) that reads the hard disc and supplies the programmes to the display unit 68
advertising supply means	Function: to supply advertisements within the periodic breaks Structure: hard disc 62 in PVR 60, containing advertisement database 70	Function: supply advertisements within the periodic breaks, each advertisement having associated therewith a header comprising a first field related to a local broadcasting time regulation laid down by the broadcasting authority, which local broadcasting time regulation restricts the time of day at which said advertisement may be shown, and a second field related to the number of times said advertisement has previously been shown during time-shifted viewing Structure: personal video recorder (PVR) that reads the database 70 and supplies adverts to the programme

a) The Functions of the “Programme Supply Means” and “Advertisement Supply Means”

Defendants propose that “programme supply means” and “advertising supply means” be construed verbatim to perform the corresponding functions recited in the claim. SafeCast’s proposed functions are inaccurate because they add descriptions of the programs and

advertisements that are stored, but those descriptors do not describe the functions of the “means.”

b) The Structure of the “Programme Supply Means”

The specification is clear that the function of the “programme supply means” is performed by the structure “hard disc 62 in PVR 60” that “contain[s] programme database 80.” *Id.* at 4:57–62. According to the patent, “the hard disc 62 in the PVR 60 [] has three parts, an advertisement database 70 which stores advertisements from the broadcast programme; a programme database 80, which stores the broadcast programme segments; and a rules database 90 which stores the rules which apply to broadcast advertisements.” *Id.*; *see also* Fig. 5 *annotated below*. The patent therefore explicitly states that the program content is stored on and supplied from the hard disc 62 in PVR 60, which has the programme database 80.

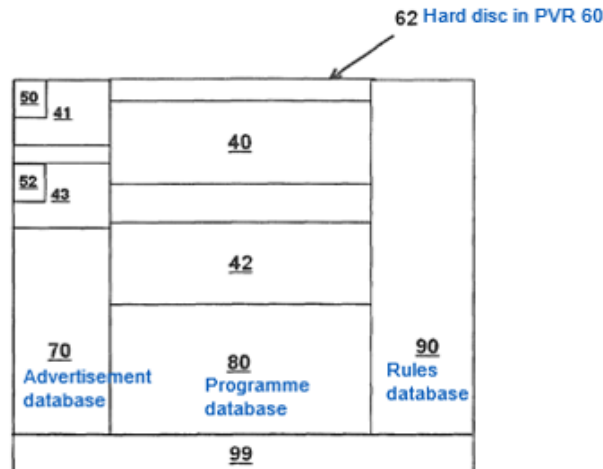


Fig 5

SafeCast’s construction must be rejected because it is impermissibly vague and because the specification does not disclose any structure other than the hard disc in the PVR. SafeCast argues that the “programme supply means” “reads the hard disc” and “supplies the programmes” (Ex. L), but SafeCast does not say (i) where the hard disc resides, or (ii) whether the programs are being supplied from the hard disc or elsewhere. The parties thus dispute whether the programs

must be stored in a hard disc in the PVR and whether the programs that are supplied for viewing must come from the hard disc.

Defendants’ proposal should be adopted because the patent only describes the recorded programs as being stored in a hard disc in the PVR and only describes supplying programs to the viewer from that hard disc. To the extent SafeCast proposes that the hard disc can reside elsewhere or the programs can be supplied to the viewer from elsewhere, there is no specification support for such construction. *See generally* ’302 Patent.

c) The Structure of the “Advertisement Supply Means”

Again, the specification explicitly defines the structure for the “advertising supply means,” as “hard disc 62 in PVR 60” that “contain[s] . . . advertisement database 70.” *Id.* at 4:57–62. According to the patent, “the hard disc 62 in the PVR 60 [] has . . . an advertisement database 70 which stores advertisements from the broadcast programme;” *Id.*; *see also* Fig. 5 *annotated above*.

SafeCast’s proposed construction should be rejected because it is inaccurate and impermissibly vague in three ways: (i) it does not define if the database 70 resides in the PVR, (ii) it does not say whether the supplied “adverts” are from the database, and (iii) the “advertisement supply means” does not supply adverts “to the programme.” Therefore, the parties dispute whether the advertisement database must be in the PVR, whether the advertisements are coming from the database or elsewhere, and to where the advertisements are supplied.

Defendants’ proposal should be adopted because it is the only construction supported by the specification. ’302 Patent at 4:57–66. To the extent SafeCast is proposing that the advertisements are stored and supplied from elsewhere, there is no specification support for such construction. *See generally id.* And there is also no specification description of supplying advertisements “to the programme,” which is nonsensical. Rather, the advertisements are in the

PVR, selected by the PVR, and then displayed to the user. *Id.* at 6:51–7:18.

C. Term 6: Time-Shifted Viewing/Listening (Claim 1, 12) [*all Defendants*]

Defendants' Construction	SafeCast's Construction
"viewing/listening after the original broadcast"	Plain and ordinary meaning; no construction necessary

Defendants propose construing “time-shifted,” a term of art at the heart of SafeCast’s alleged invention. Defendants’ proposed construction is supported by the claims, specification, dictionary definitions, and even a Supreme Court case.

The term “time-shifting” was not coined by the ’302 Patent inventors. For example, prior to the filing of the patent, the Oxford English Dictionary (3d ed. 2008) defined “time-shifting” as “[t]he action of viewing a recording of an earlier television broadcast.” Ex. H. The New Oxford American Dictionary (3d ed. 2010) similarly defined “time-shift” as “record (a television program) for later viewing.” Ex. I; *see also CUPP Computing AS v. Trend Micro Inc.*, 53 F.4th 1376, 1381 (Fed. Cir. 2022) (approving use of “general-purpose dictionaries” for claim construction). The Supreme Court even discussed “time-shifting” in one of its decisions as early as 1984, where it defined “time-shifting” as “the practice of recording a program to view it once *at a later time*, and thereafter erasing it.” Ex. J at 006, *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 423 (1984) (emphasis added); *see also id.* at 005 (464 U.S. at 421) (“[T]he average member of the public uses a VTR principally to record a program he cannot view as it is being televised and then to watch it once at a later time. This practice [is] known as ‘time-shifting’”).

The intrinsic evidence reflects this well-known concept and supports Defendants’ construction. Claim 1 of the ’302 patent recites advertisements “*again* shown during *time-shifted viewing*,” making clear “time-shifted viewing” is a viewing after an original broadcast. The Background of the Invention similarly states that the invention relates to a system for supplying

views of “time-shifted” programs that were “previously broadcast on television or radio.” *Id.* at 1:6–12. If a program contains advertisements “which were originally broadcast,” some of those advertisements may be unsuitable for a later time of viewing. *Id.* at 1:30–35. To solve this problem, a program is stored for “later viewing on [the viewer’s] hard disk” along with the original advertisements and additional advertisements, and the system will insert advertisements that are appropriate during the “time-shifted” viewing. *Id.* at 2:17–20; *see also id.* at 2:1–12, 2:50–52.

Indeed, the entire purpose of the claimed invention is to solve problems (viewing of time-inappropriate advertisements) that arise because programs and interleaved advertisements are viewed (or listened to) after their original broadcast:

- “In a simple system, when the owner of the PVR instructs *play of a recorded programme*, at each advertising break the PVR checks the current Real Time of day RT, checks the Time of Day validity header in each advert for restrictions on time of playing, and if there is no such restriction, *shows the originally broadcast advert at a shifted time*. Such an arrangement will permit advertisers to charge for the *second viewing*, which has previously been forbidden by law.” *Id.* at 5:13-19 (emphases added).
- “[V]iewers can be persuaded to watch a *time-shifted programme* (and hence advertisements) *at a time that they might otherwise not watch that programme*.” *Id.* at 7:46-49 (emphasis added).
- “[Viewers] tend, when viewing television, first to see what is being broadcast on live television that interests them and then, if there is nothing good to view, *seeing what they may have already recorded for time-shifted viewing*.” *Id.* at 8:8-13 (emphases added).⁶

Defining the term “time-shifted viewing/listening” as “viewing/listening at a later time, after the original broadcast” is critical to clarify that the claims are directed to a later viewing of an earlier, original broadcast. Without time-shifting, there is no need for the claimed invention, and “time-

⁶ While the ’302 Patent focuses on time-shifted viewing of broadcast television programs, it also discusses time-shifted listening of broadcast radio programs. *Id.* at 8:22–25. Defendant’s proposed construction thus includes “viewing” or “listening” after the original broadcast.

shifted” has a meaning in the pertinent art of the claimed invention. Construing this term in view of the intrinsic record would prevent a misleading expansion of the claims to cover systems that do not present a program and advertisements at a time after an original broadcast. The Court should adopt Defendants’ proposed construction to define the proper scope of the invention.

V. AGREED CONSTRUCTIONS

Defendants request the Court adopt the following agreed constructions. *See* Ex. L at 2–3.

Term	Cls.	Agreed Construction
“rules database means . . .”	1, 7	Function: contain[] rules relating to said local broadcasting time regulation Structure: hard disc 62 in PVR 60, containing rules database (90)
“data storage means . . .”	12	Function: storing a programme episode database, an advertisement database, and a rules database Structure: hard disc 62 in PVR 60
“input connection means . . .”	12	Function: connection to a source of video/audio signals and a real-time clock signal Structure: a connection between PVR 60 and aerial 20, a modem 22 or the internet 24 as in prior art
“output means . . .”	12	Function: connection to a consumer’s viewing/listening unit Structure: connection between the PVR (60) and a TV set 68, as depicted in Figure 4

DATED: April 27, 2023

/s/ Michael E. Jones

Michael E. Jones (TBN: 10929400)

Shaun W. Hassett (TBN: 24074372)

POTTER MINTON

102 North College

Suite 900

Tyler, Texas 75702

Telephone: 903.597.8311

Facsimile: 903.593.0846

mikejones@potterminton.com

shaunhassett@potterminton.com

Kevin P. Anderson

kpanderson@duanemorris.com

DUANE MORRIS LLP

901 New York Avenue NW

Suite 700 East

Washington, DC 20001

Telephone: 202.776.5213

Facsimile: 202.315.3169

Alice E. Snedeker

aesnedeker@duanemorris.com

DUANE MORRIS LLP

1075 Peachtree Street NE, Suite 1700

Atlanta, GA 30309

Telephone: (404) 253-6900

Facsimile: (404) 253-6901

*Attorneys for Defendant Verizon
Communications Inc.*

/s/ *Alice E. Snedeker*

Gilbert A. Greene (TBN 24045976)

BGreene@duanemorris.com

DUANE MORRIS LLP

Las Cimas IV

900 S. Capital of Texas Highway, Suite 300

Austin, TX 78746

Telephone: (512) 277-2246

Facsimile: (512) 597-0703

Matthew S. Yungwirth

msyungwirth@duanemorris.com

Alice E. Snedeker

aensedeker@duanemorris.com

DUANE MORRIS LLP

1075 Peachtree Street NE, Suite 1700

Atlanta, GA 30309

Telephone: (404) 253-6900

Facsimile: (404) 253-6901

Attorneys for Defendant AT&T Corp.

/s/ Michael E. Jones

Michael E. Jones (SBN: 10929400)

Shaun W. Hassett (SBN: 24074372)

POTTER MINTON, PC

102 N. College, Suite 900

Tyler, Texas 75702

Telephone: (903) 597-8311

Facsimile: (903) 593-0846

mikejones@potterminton.com

shaunhassett@potterminton.com

Darin W. Snyder

Email: dsnyder@omm.com

Luann L. Simmons

Email: lsimmons@omm.com

David S. Almeling

Email: dalmeling@omm.com

Amy K. Liang

Email: aliang@omm.com

Saurabh Prabhakar

Email: sprabhakar@omm.com

O'MELVENY & MYERS LLP

Two Embarcadero Center

28th Floor

San Francisco, California 94111-3823

Telephone: (415) 984-8700

Facsimile: (415) 984 8701

Attorneys for Defendant Google LLC

/s/ Henry Huang

Melissa R. Smith
State Bar No. 24001351
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Tel: (903) 934-8450
Fax: (903) 934-9257
melissa@gillamsmithlaw.com

Jonathan J. Lamberson (*pro hac vice*)
Henry Huang (*pro hac vice*)
WHITE & CASE LLP
3000 El Camino Real
2 Palo Alto Square, Suite 900
Palo Alto, CA 94306
Tel: (650) 213-0300
lamberson@whitecase.com
henry.huang@whitecase.com

Hallie Kiernan (*pro hac vice*)
WHITE & CASE LLP
1221 Avenue of the Americas
New York, New York 10020
Tel: (212) 819-8200
hallie.kiernan@whitecase.com

*Attorneys for Defendant Microsoft
Corporation*

EXHIBIT L

Liang, Amy K.

From: William Ramey <wramey@rameyfirm.com>
Sent: Thursday, April 13, 2023 1:44 PM
To: Liang, Amy K.; Kyril Talanov; #Google-Safecast; mikejones@potterminton.com; Huang, Henry; Lamberson, Jonathan; Kuehn Pelletier, Lauren; Snedeker, Alice; Yungwirth, Matthew S.; Shaun Hassett
Cc: LitigationParalegals; Jeff Kubiak; Linda Saltiel; Susan Kalra
Subject: RE: SafeCast - Claim Construction meet and confer

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL MESSAGE]

Here you go:

Control means

Function: read said first field and said clock signal and said rules database and to apply said local broadcasting time regulation to each advertisement before said advertisement is shown.

Structure: the personal video recorder (PVR) at 4:42-5:29; 6:4-12

Programme supply means

Function: supply broadcast digital video/audio programmes having therein periodic breaks for the insertion of advertisements.

Structure: personal video recorder (PVR) that reads the hard disc and supplies the programmes to the display unit 68. Col. 5:13-19 shows support.

Advertisement supply means

Function: supply advertisements within the periodic breaks, each advertisement having associated therewith a header comprising a first field related to a local broadcasting time regulation laid down by the broadcasting authority, which local broadcasting time regulation restricts the time of day at which said advertisement may be shown, and a second field related to the number of times said advertisement has previously been shown during time-shifted viewing.

Structure: personal video recorder (PVR) that reads the database 70 and supplies adverts to the programme. Col. 5:21-29 and 6:45-53 show support.

From: Liang, Amy K. <aliang@omm.com>
Sent: Thursday, April 13, 2023 2:35 PM
To: Kyril Talanov <ktalanov@rameyfirm.com>; #Google-Safecast <GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang, Henry <henry.huang@whitecase.com>; Lamberson, Jonathan <jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren <lauren.kuehn@whitecase.com>; Snedeker, Alice <AESnedeker@duanemorris.com>; Yungwirth, Matthew S. <MSYungwirth@duanemorris.com>; Shaun Hassett <shaunhassett@potterminton.com>
Cc: William Ramey <wramey@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; Jeff Kubiak <jkubiak@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>; Liang, Amy K. <aliang@omm.com>
Subject: RE: SafeCast - Claim Construction meet and confer

Kyрил,

Please let us know SafeCast's proposed claim constructions by 3p CT today. They were due three weeks ago.

Defendant's Opening Claim Construction Brief is due today, but you have still not disclosed your proposed constructions. So, of course, we agree that if SafeCast is going to propose constructions on the day that Defendants' Opening Claim Construction Brief is due, then Defendants will need an extension to their opening brief deadline. The Court's [Standing Order](#) does not permit schedule changes that impact the final brief deadline. We thus propose amending the schedule as below. This is all contingent on SafeCast actually disclosing its proposed construction today – if you delay, then we reserve the right to request additional amendments to the case schedule.

4/13/2023 [4/24]	Defendants' Opening Brief
5/4/2023 [5/9]	Plaintiff's Responsive Brief
5/25/2023	Defendants' Reply Brief
6/1/2023	Plaintiff's Sur-Reply Brief

Finally, we wanted to see if SafeCast would agree to not submit technology tutorials in this case. We do not think the Court will need additional guidance on the technology here.

Thanks,
Amy

O'Melveny

Amy Liang

Counsel

aliang@omm.com

O: +1-415-984-8905

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From: Kyрил Talanov <ktalanov@rameyfirm.com>

Sent: Wednesday, April 12, 2023 6:20 PM

To: Liang, Amy K. <aliang@omm.com>; #Google-Safecast <GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang, Henry <henry.huang@whitecase.com>; Lamberson, Jonathan <jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren <lauren.kuehn@whitecase.com>; Snedeker, Alice <AESnedeker@duanemorris.com>; Yungwirth, Matthew S. <MSYungwirth@duanemorris.com>; Shaun Hassett <shaunhassett@potterminton.com>

Cc: William Ramey <wramey@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; Jeff Kubiak <jkubiak@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>

Subject: Re: SafeCast - Claim Construction meet and confer

[EXTERNAL MESSAGE]

Hi Amy,

SafeCast agrees with Defendants' proposals on the following means plus function terms:

- rules database means
- data storage means

- input connection means
- output means

Accordingly, there does not appear to be a need for the Defendants' motion.

SafeCast does not agree to Defendants' proposals with respect to the remaining terms and will provide its position concerning the remaining means plus function terms by tomorrow.

Additionally, SafeCast proposes a one-week extension (or however long the schedule permits) on each party's briefing deadlines up until the Markman hearing deadline. If Defendants agree, we can get it on file tomorrow.

Thanks,
Kyril

On Apr 12, 2023, at 6:23 PM, Liang, Amy K. <aliang@omm.com> wrote:

Bill,

Our Markman brief is due tomorrow and we still have no response from SafeCast on claim narrowing. Because SafeCast has still not agreed to narrow any terms, Google will be filing a Motion for Leave to request briefing of two means plus function terms "input connection means" and "output means" that go over the Courts presumptive 8-term limit for 1 patent cases. Based on our conference and correspondences with you and Kyril below, we presume you oppose and will be filing our motion for leave as opposed. But please let us know ASAP, if you do not oppose Google's motion for leave to construe two additional means-plus-function terms.

Sent from my iPhone

On 06-Apr-2023, at 3:59 PM, William Ramey <wramey@rameyfirm.com> wrote:

[EXTERNAL MESSAGE]

Hi Amy,

We are working on the claim construction. We appreciate your positions and we are considering them.

We are not yet ready to agree with your proposals. We will respond more fully next week.

Bill

From: Liang, Amy K. <aliang@omm.com>

Sent: Thursday, April 6, 2023 5:57 PM

To: Kyril Talanov <ktalanov@rameyfirm.com>; #Google-Safecast

<GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang, Henry

<henry.huang@whitecase.com>; Lamberson, Jonathan

<jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren

<lauren.kuehn@whitecase.com>; Snedeker, Alice <AESnedeker@duanemorris.com>;

Yungwirth, Matthew S. <MSYungwirth@duanemorris.com>; Shaun Hassett

<shaunhassett@potterminton.com>

Cc: William Ramey <wramey@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; Jeff Kubiak <jkubiak@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>
Subject: Re: SafeCast - Claim Construction meet and confer

Kyril,

I'm following up for a third time to see if SafeCast: (1) has any response to Defendants' constructions and the evidence that we cited to you in writing below in support of those constructions; or (2) has identified any evidence to support its position of opposing Defendants' proposals.

As you know, the Court's Order Governing Proceedings requires the parties to meet and confer about their construction proposals and attempt to narrow the disputed terms based on a meaningful consideration of each side's positions. We have yet to hear from SafeCast how it is interpreting the disputed claims differently from Defendants, if at all, much less what evidence SafeCast has to oppose Defendants' proposed constructions. Instead, during the meet and confer you made clear that you were not prepared to discuss the constructions or evidence live and would only consider our evidence in writing, which I provided to you promptly after our call and which you have not responded to.

We would like to avoid burdening the Court with terms if there is no genuine dispute about the scope of any term. If SafeCast still has no response, then we will brief each term as if it is disputed. But we do not think that SafeCast has met its obligation to meaningfully meet and confer to narrow the terms in dispute by today, and SafeCast's refusal to engage in the term narrowing process is wasting Defendants' and the Court's time and resources.

Amy

Sent from my iPhone

On 05-Apr-2023, at 1:15 PM, Liang, Amy K. <aliang@omm.com> wrote:

Kyril,

Please let us know if SafeCast has any evidence to rebut Defendants' claim construction proposals, including Defendants' position that the "means" terms are means-plus-function elements. Or please let us know if SafeCast agrees to any of our claim construction proposals such that we can narrow the number of terms in dispute.

Thanks,
Amy

O'Melveny

Amy Liang
Counsel

aliang@omm.com

O: +1-415-984-8905

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From: Kyril Talanov <ktalanov@rameyfirm.com>

Sent: Tuesday, April 4, 2023 2:28 PM

To: Liang, Amy K. <aliang@omm.com>; #Google-Safecast <GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang, Henry <henry.huang@whitecase.com>; Lamberson, Jonathan <jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren <lauren.kuehn@whitecase.com>; Snedeker, Alice <AESnedeker@duanemorris.com>; Yungwirth, Matthew S. <MSYungwirth@duanemorris.com>; Shaun Hassett <shaunhassett@potterminton.com>

Cc: William Ramey <wramey@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; Jeff Kubiak <jkubiak@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>

Subject: RE: SafeCast - Claim Construction meet and confer

[EXTERNAL MESSAGE]

Hi Amy,

We disagree with your mischaracterization that SafeCast was “not familiar enough with the asserted patent or the file history” on today’s call. I explained Plaintiff’s current position with respect to each term proposed by Google. In fact, I repeatedly asked you to provide the specific cites to the patent specification and/or the prosecution history that you claim support Defendants’ proposed constructions. You were unable to point me to even one on the call.

Thank you for providing the below information. We will consider it and get back to you.

Best regards,
Kyril

Kyril Talanov

<image001.png>
5020 Montrose Blvd. Suite 800
Houston, TX 77006
713.426.3923
ktalanov@rameyfirm.com
www.rameyfirm.com

From: Liang, Amy K. <aliang@omm.com>
Sent: Tuesday, April 4, 2023 4:03 PM
To: Kyril Talanov <ktalanov@rameyfirm.com>; #Google-Safecast
 <GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang,
 Henry <henry.huang@whitecase.com>; Lamberson, Jonathan
 <jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren
 <lauren.kuehn@whitecase.com>; Snedeker, Alice
 <AESnedeker@duanemorris.com>; Yungwirth, Matthew S.
 <MSYungwirth@duanemorris.com>; Shaun Hassett
 <shaunhassett@potterminton.com>
Cc: William Ramey <wramey@rameyfirm.com>; LitigationParalegals
 <LitParalegals@rameyfirm.com>; Jeff Kubiak
 <jkubiak@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>;
 Susan Kalra <skalra@rameyfirm.com>; Liang, Amy K.
 <aliang@omm.com>
Subject: RE: SafeCast - Claim Construction meet and confer

Kyril,

Intrinsic evidence supporting our proposed constructions are shown below.

1. **Local broadcasting regulation / local broadcasting time regulation laid down by the broadcasting authority** – see Dkt. 25-2 (attached) at 40, 17, 20, 38.
2. Means-plus-function terms:
 1. The means-plus-function presumption is described in *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015).
 2. **Programme supply means / advertisement supply means / rules database means** – The function is stated in the claim, and the proposed structure is described in the '302 Patent at 4:57-63 and Fig. 5
 3. **Data storage means** – The function is stated in the claim, and the proposed structure is described in the '302 Patent at 4:57-63 and Fig. 5
 4. **Input connection means** – The function is stated in the claim, and the proposed structure is described in the '302 Patent at 1:65-67, 3:16-19, 4:43-48
 5. **Output means** – The function is stated in the claim, and the proposed structure is described in the '302 Patent at Fig. 4 and 4:51.

We were disappointed that SafeCast was not familiar enough with the asserted patent or file history to identify any evidence to explain its disagreements with Defendants' proposals or to identify any evidence in support of SafeCast's claim construction positions on today's call. As I stated, we would be happy consider any evidence that SafeCast can identify to rebut Defendants' proposals. Please let us know SafeCast has any evidence to oppose Defendants' proposals, including Defendants' proposals to construe the "means" terms as means-plus-function terms.

Thanks,
Amy

O'Melveny

Amy Liang

Counsel

aliang@omm.com

O: +1-415-984-8905

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From: Kyril Talanov <ktalanov@rameyfirm.com>

Sent: Tuesday, April 4, 2023 1:28 PM

To: Liang, Amy K. <aliang@omm.com>; #Google-Safecast <GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang, Henry <henry.huang@whitecase.com>; Lamberson, Jonathan <jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren <lauren.kuehn@whitecase.com>; Snedeker, Alice <AESnedeker@duanemorris.com>; Yungwirth, Matthew S. <MSYungwirth@duanemorris.com>; Shaun Hassett <shaunhassett@potterminton.com>

Cc: William Ramey <wramey@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; Jeff Kubiak <jkubiak@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>

Subject: RE: SafeCast - Claim Construction meet and confer

[EXTERNAL MESSAGE]

Hi Amy and Matt,

Thanks for jumping on the call with me to discuss the proposed constructions.

Amy - as discussed, will you please send me the specific citations to Google's proposed structure and function for the "means" terms? We will consider and get back to you.

Thanks,
Kyril

Kyril Talanov

<image001.png>
5020 Montrose Blvd. Suite 800
Houston, TX 77006
713.426.3923 ext. 307

ktalanov@rameyfirm.com
www.rameyfirm.com

From: Liang, Amy K. <aliang@omm.com>
Sent: Tuesday, April 4, 2023 3:05 PM
To: Kyril Talanov <ktalanov@rameyfirm.com>; #Google-Safecast <GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang, Henry <henry.huang@whitecase.com>; Lamberson, Jonathan <jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren <lauren.kuehn@whitecase.com>; Snedeker, Alice <AESnedeker@duanemorris.com>; Yungwirth, Matthew S. <MSYungwirth@duanemorris.com>; Shaun Hassett <shaunhassett@potterminton.com>
Cc: William Ramey <wramey@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; Jeff Kubiak <jkubiak@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>; Liang, Amy K. <aliang@omm.com>
Subject: RE: SafeCast - Claim Construction meet and confer

Kyril,

For our discussion now.

O'Melveny

Amy Liang

Counsel

aliang@omm.com

O: +1-415-984-8905

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From: Kyril Talanov <ktalanov@rameyfirm.com>
Sent: Tuesday, April 4, 2023 10:48 AM
To: Liang, Amy K. <aliang@omm.com>; #Google-Safecast <GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang, Henry <henry.huang@whitecase.com>; Lamberson, Jonathan <jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren <lauren.kuehn@whitecase.com>; Snedeker, Alice <AESnedeker@duanemorris.com>; Yungwirth, Matthew S. <MSYungwirth@duanemorris.com>; Shaun Hassett <shaunhassett@potterminton.com>
Cc: William Ramey <wramey@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; Jeff Kubiak <jkubiak@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>;

Susan Kalra <skalra@rameyfirm.com>

Subject: RE: SafeCast - Claim Construction meet and confer

[EXTERNAL MESSAGE]

Hi Amy,

SafeCast does not have any constructions to narrow at this time. However, we look forward to work with Defendants if suitable opportunities to do so arise in the future.

We are available this afternoon after 3PM CST if you believe a call is still needed.

Thanks,
Kyril

Kyril Talanov

<image001.png>

5020 Montrose Blvd. Suite 800

Houston, TX 77006

713.426.3923

ktalanov@rameyfirm.com

www.rameyfirm.com

From: Liang, Amy K. <aliang@omm.com>

Sent: Tuesday, April 4, 2023 12:39 PM

To: Kyril Talanov <ktalanov@rameyfirm.com>; William Ramey <wramey@rameyfirm.com>

Cc: Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>; LitigationParalegals

<LitParalegals@rameyfirm.com>; #Google-Safecast

<GoogleSafecast@omm.com>; mikejones@potterminton.com; Huang,

Henry <henry.huang@whitecase.com>; Lamberson, Jonathan

<jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren

<lauren.kuehn@whitecase.com>; Snedeker, Alice

<AESnedeker@duanemorris.com>; Yungwirth, Matthew S.

<MSYungwirth@duanemorris.com>; Shaun Hassett

<shaunhassett@potterminton.com>; Liang, Amy K. <aliang@omm.com>

Subject: RE: SafeCast - Claim Construction meet and confer

Bill and Kyril,

Please let us know your availability to meet and confer about narrowing claim construction terms before the parties' deadline on Thursday.

Thanks,
Amy

O'Melveny

Amy Liang

Counsel

aliang@omm.com

O: +1-415-984-8905

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From: Liang, Amy K. <aliang@omm.com>

Sent: Monday, April 3, 2023 3:07 PM

To: Kyril Talanov <ktalanov@rameyfirm.com>; William Ramey <wramey@rameyfirm.com>

Cc: Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; #Google-Wireless <Google-Wireless@omm.com>; mikejones@potterminton.com; Huang, Henry <henry.huang@whitecase.com>; Lamberson, Jonathan <jonathan.lamberson@whitecase.com>; Kuehn Pelletier, Lauren <lauren.kuehn@whitecase.com>; Snedeker, Alice <AESnedeker@duanemorris.com>; Yungwirth, Matthew S. <MSYungwirth@duanemorris.com>; Shaun Hassett <shaunhassett@potterminton.com>; Liang, Amy K. <aliang@omm.com>

Subject: RE: SafeCast - Claim Construction meet and confer

Bill and Kyril,

I'm resending to add counsel for AT&T, Microsoft, and Verizon to the thread.

From: Liang, Amy K. <aliang@omm.com>

Sent: Monday, April 3, 2023 3:03 PM

To: Kyril Talanov <ktalanov@rameyfirm.com>; mikejones@potterminton.com; Shaun Hassett <shaunhassett@potterminton.com>

Cc: William Ramey <wramey@rameyfirm.com>; Linda Saltiel <lsaltiel@rameyfirm.com>; Susan Kalra <skalra@rameyfirm.com>; LitigationParalegals <LitParalegals@rameyfirm.com>; #Google-Wireless <Google-Wireless@omm.com>; Liang, Amy K. <aliang@omm.com>

Subject: RE: SafeCast - Claim Construction meet and confer

Bill and Kyril,

Please let us know when you are available for a meet and confer with Defendants on Tuesday 4/4 or Wednesday 4/5 to discuss term narrowing as required by the Court. We would like to have a meaningful meet and confer to discuss SafeCast's proposed interpretation and scope of each disputed term and how they differ

from Defendants' proposed constructions, if at all. We are available on both days from 12-1p CT.

Thanks,
Amy

O'Melveny

Amy Liang

Counsel

aliang@omm.com

O: +1-415-984-8905

O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
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