

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PORTSMOUTH NETWORK
CORPORATION,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Civil Action No. 2:23-cv-441-JRG

JURY TRIAL DEMANDED

**PLAINTIFF PORTSMOUTH NETWORK CORPORATION'S AND
DEFENDANT CISCO SYSTEMS, INC.'S JOINT CLAIM CONSTRUCTION AND
PREHEARING STATEMENT**

Pursuant to P. R. 4-3, and the Court's Docket Control Order (Dkt. No. 36), Plaintiff Portsmouth Network Corporation ("Portsmouth") and Defendant Cisco Systems, Inc. ("Cisco"), through their undersigned counsel of record, submit this P. R. 4-3 Joint Claim Construction and Prehearing Statement.

1. Agreed To Constructions (P. R. 4-3(a)(1))

A joint claim construction chart reflecting the parties' agreed constructions is attached as Exhibit A.

2. Proposed Construction Of Disputed Terms (P. R. 4-3(a)(2))

A joint claim construction chart reflecting the parties' proposed constructions of disputed terms, along with an identification of supporting evidence, is attached as Exhibit B. Portsmouth and Cisco met and conferred pursuant to P. R. 4-2(c) on September 6, 2024, but were unable to reach an agreement on the construction of any of these terms.

3. Anticipated Length Of Time For Claim Construction Hearing (P. R. 4-3(a)(3))

The parties anticipate that the length of time necessary for the Claim Construction Hearing will be three (3) hour(s). Portsmouth and Cisco will be allotted 90 minutes per side. Either party may begin their presentation with up to 15 minutes of non-argumentative technology tutorial, which will count toward that party's total allotted time. Each side may allocate their time across the substantive positions as they see fit.

4. Witnesses To Be Called At Claim Construction Hearing (P. R. 4-3(a)(4))

The parties state that neither party proposes to call any witnesses at the Claim Construction Hearing.

EXHIBIT A: AGREED CONSTRUCTIONS

Claims	Term	Agreed Construction
'986 Patent, Claims 1, 12, 13, 16, 19, 24	“failure associated with the first link”	“fault in the first link itself or in one of the ports to which the first link is connected”
'279 Patent, Claims 1, 15	“quanta”	“more than one quantum”

EXHIBIT B: DISPUTED CONSTRUCTIONS

Index	Claim(s)	Term(s)	Portsmouth's Proposal	Cisco's Proposal
1a	'986 Patent, Claims 1-4, 6-8, 11, 16, 19-20	"edge switch"	<u>Proposed Construction:</u> Plain and ordinary meaning OR "Switch located at the edge of a network" <u>Evidence:</u> '986 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIGS. 1, 2A, 2B; 1:26-38; 4:50-54; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00503, Paper 2 (Petition), at 6, 8, 30. Newton's Telecom Dictionary, 23rd Edition. Declaration of Dr. James Olivier. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco.	<u>Proposed Construction:</u> "core switch that is directly connected to (an) access switch(es)" <u>Evidence:</u> '986 Patent specification, claims and file history, including but not limited to: FIGS. 1-3; Abstract; 1:26-38; 2:7-22; 3:15-41; 3:65-4:54; 7:9-8:44; 9:11-10:50; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00505, Paper 6 (Patent Owner Preliminary Response), at 5, 12-15, 20-23. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

Index	Claim(s)	Term(s)	Portsmouth's Proposal	Cisco's Proposal
1b	'986 Patent, Claims 14, 18, 23	"edge switch"	<u>Proposed Construction:</u> Plain and ordinary meaning OR "Switch located at the edge of a network" <u>Evidence:</u> '986 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIGS. 1, 2A, 2B; 1:26-38; 4:50-54; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00503, Paper 2 (Petition), at 6, 8, 30. Newton's Telecom Dictionary, 23rd Edition. Declaration of Dr. James Olivier. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco.	<u>Proposed Construction:</u> Indefinite for lack of antecedent basis. In the alternative, "core switch that is directly connected to (an) access switch(es)" <u>Evidence:</u> '986 Patent specification, claims and file history, including but not limited to: FIGS. 1-3; Abstract; 1:26-38; 2:7-22; 3:15-41; 3:65-4:54; 7:9-8:44; 9:11-10:50; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00505, Paper 6 (Patent Owner Preliminary Response), at 5, 12-15, 20-23. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

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2	'986 Patent, Claims 1, 2, 5, 6, 10, 11, 13, 14, 17, 18, 22, 23	"access switch"	<u>Proposed Construction:</u> Plain and ordinary meaning OR "Switch providing access to a network" <u>Evidence:</u> '986 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIGS. 1, 2A; 1:26-38; 4:50-54, 7:8-22; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00503, Paper 2 (Petition), at 6, 8, 21, 30. Newton's Telecom Dictionary, 23rd Edition. Declaration of Dr. James Olivier. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco.	<u>Proposed Construction:</u> "switch with ports that connect to LANs and/or to other network endpoints" <u>Evidence:</u> '986 Patent specification, claims and file history, including but not limited to: FIGS. 1-3; Abstract; 1:26-38; 2:7-22; 3:15-41; 3:65-4:54; 7:9-8:44; 9:26-10:50; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00505, Paper 6 (Patent Owner Preliminary Response), at 5, 11-15, 17, 19-23. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

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3	'279 Patent, Claims 1, 10, 14-16, 18	"predetermined"	<u>Proposed Construction:</u> Plain and ordinary meaning <u>Evidence:</u> '279 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIGS. 3-7; 3:30-33; all claims. Declaration of Dr. James Olivier. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00503, Paper 2 (Petition), at 48-50. Merriam Webster's Collegiate Dictionary, 10th Edition. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco	<u>Proposed Construction:</u> "determined before the data flow request" <u>Evidence:</u> '279 Patent specification, claims and file history, including but not limited to: FIGS. 3-7; 3:21-39; 6:29-38; all claims. File History, Office Action Response dated October 25, 2004, Remarks, at 9-10. File History, Office Action Response dated July 6, 2005, Remarks, at 6-7. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00503, Paper 6 (Patent Owner Preliminary Response), at 14-15. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

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4	'279 Patent, Claims 1, 14, 15, 18	"quantum"	<u>Proposed Construction:</u> Plain and ordinary meaning <u>Evidence:</u> '279 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIGS. 1-7; 5:26-30; 6:57-60; 7:20-24; 7:25-42; all claims. Declaration of Dr. James Olivier. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00503, Paper 2 (Petition), at 48-50. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco	<u>Proposed Construction:</u> "an amount of a requested resource by which to increase or decrease" <u>Evidence:</u> '279 Patent specification, claims and file history, including but not limited to: FIGS. 1-7; 2:38-46; 3:21-39; 5:14-50; 6:29-7:56; 8:27-9:4; all claims. File History, Office Action Response dated October 25, 2004, Remarks, at 9-10. File History, Office Action Response dated July 6, 2005, Remarks, at 6-7. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

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5	'394 Patent, Claims 1, 5, 11, 15	"a high-capacity port"	<u>Proposed Construction:</u> "A port formed by aggregating two or more ports" <u>Evidence:</u> '394 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIG. 1; 2:24-44; 6:61-7:6; 9:54-56; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00506, Paper 2 (Petition), at 44-46, 61. Declaration of Dr. James Olivier. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco.	<u>Proposed Construction:</u> "a link aggregation group (LAG)" <u>Evidence:</u> '394 Patent specification, claims and file history, including but not limited to: FIGS. 1-4; 1:24-44; 6:61-7:6; 9:54-10:14; all claims. CISCO-PORTSMOUTH00967073 - CISCOPORTSMOUTH00967235 – IEEE 802.1AX standard, titled "IEEE Standard for Local and Metropolitan Area Networks—Link Aggregation (incorporated into the '394 Patent by reference; <i>see, e.g.</i>, '394 Patent, 6:65-7:1). Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

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6	'394 Patent, Claims 8, 18	"a new processing unit added to the network element"	<u>Proposed Construction:</u> Plain and ordinary meaning <u>Evidence:</u> '394 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIGS. 1, 2; 2:45-63; 6:47-53; 9:41-53; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00506, Paper 2 (Petition), at 72-75, 77. Declaration of Dr. James Olivier. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco.	<u>Proposed Construction:</u> "a processing unit newly-inserted into the network element" <u>Evidence:</u> '394 Patent specification, claims and file history, including but not limited to: FIGS. 1-4; 2:45-63; 6:47-53; 9:41-53; all claims. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

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7	'394 Patent, Claims 1, 3-18	"multicast packet stream"	<u>Proposed Construction:</u> Plain and ordinary meaning OR "A packet stream that can be sent to multiple devices" <u>Evidence:</u> '394 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIGS. 1-4; 1:12-14; 5:61-64; 5:66-6:3; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00506, Paper 2 (Petition), at 33-39, 48-49, 62-63. Declaration of Dr. James Olivier. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco.	<u>Proposed Construction:</u> "the actual content coming from a multicast source, such as a channel or movie" <u>Evidence:</u> '394 Patent specification, claims and file history, including but not limited to: FIGS. 1-4; 1:10-24; 4:44-57; 5:55-6:3; 6:15-22; 7:40-52; 7:62-8:7; 8:46-59; all claims. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00505, Paper 6 (Patent Owner Preliminary Response), at 11. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

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8	'637 Patent, Claims 1, 2, 16-25	"a network" / "a communication network"	<u>Proposed Construction:</u> Plain and ordinary meaning <u>Evidence:</u> '637 Patent specification, claims, file history, and extrinsic evidence, including but not limited to: FIGS. 1-3; Abstract; 1:16-19; 3:55-60; 4:41-50; all claims. Declaration of Dr. James Olivier. <i>Cisco Systems, Inc. v. Portsmouth Network Corp.</i>, IPR2024-00954, Paper 2 (Petition), at 5, 9, 10-12. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco	<u>Proposed Construction:</u> "a VPLS network" <u>Evidence:</u> '637 Patent specification, claims and file history, including but not limited to: FIGS. 1-3; Title; Abstract; 1:15-57; 2:23-28; 3:51-67; 5:11-20; 5:26-6:8; 6:53-7:6; 7:30-56; 8:12-16; 8:34-51; 9:1-10; 9:44-10:61; all claims. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

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9	'637 Patent, Claims 1, 6-10, 12-25	“deactivating a physical layer of the first set of links connected thereto” / “deactivate the physical layer resources of each node to links in the first set of links connected to that node”	<u>Proposed Construction:</u> Plain and ordinary meaning <u>Evidence:</u> '637 Patent specification, claims and file history, including but not limited to: FIGS. 1-3; 2:30-36; 5:7-11; 6:39-47; 7:10-21; all claims. Declaration of Dr. James Olivier. Portsmouth reserves the right to rely upon or use any statements made by or evidence identified by Cisco	<u>Proposed Construction:</u> “deactivating the physical layer[] of all links connected [to] all other nodes other than the detecting node” / “deactivate the physical layer[] of all links connected [to] all other nodes other than the detecting node” <u>Evidence:</u> '637 Patent specification, claims and file history, including but not limited to: FIGS. 1-3; Abstract; 2:1-22; 2:30-3:34; 4:17-28; 9:28-37; 9:53-67; all claims. File History, Office Action Response dated October 7, 2010, Remarks, at 10-11. File History, Notice of Allowance dated January 18, 2012, Examiner's Statement of Reasons for Allowance, at 2. Cisco reserves the right to rely upon or use any statements made by or evidence identified by Portsmouth, including before the USPTO. Cisco reserves the right to submit expert testimony or evidence to rebut any expert testimony or evidence presented by Portsmouth.

Dated: September 11, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this **PLAINTIFF PORTSMOUTH NETWORK CORPORATION'S AND DEFENDANT CISCO SYSTEMS, INC.'S JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**, *via* the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 11th day of September, 2024.

/s/ Jonathan V. Lewis
Jonathan V. Lewis

CERTIFICATE OF CONFERENCE

Counsel for Plaintiffs and counsel for Defendants have met and conferred in compliance with P. R. 4-1(b) and 4-2(c).

/s/ Jonathan V. Lewis
Jonathan V. Lewis