

**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-00441-JRG

**JURY TRIAL DEMANDED**

**PLAINTIFF’S OPENING CLAIM CONSTRUCTION BRIEF**

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| <b>Exhibit</b> | <b>Description</b>                                                                                                    |
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| A              | Declaration of Dr. James Olivier in Support of Portsmouth's Claim<br>Construction Positions, and Exhibits 1-4 thereto |

## **I. INTRODUCTION**

Portsmouth's proposed claim constructions are consistent with the claims, the intrinsic evidence, extrinsic evidence, and the plain and ordinary meaning of those terms. Defendants, in an effort to read improper extraneous limitations into the claims, assert that the Court should construe numerous terms even though such terms are clear on their face and need no construction. Defendants' proposals are unsupported and are merely transparent attempts to avoid liability.

## **II. BACKGROUND OF THE TECHNOLOGY**

### **A. The '986 Patent**

The '986 patent is directed to efficiently protecting against network failure through the use of redundant switch ports and links. The claimed methods and devices of the '986 patent recite an architecture that rapidly reconfigures a network in response to a detected failure in the network. In some embodiments of the '986 Patent, the system places a first port in an active state while placing a second port in a blocking state, conveying communication traffic over the first link while the first port is in the active state, thereby causing the bridges to build respective databases for use in forwarding the traffic, and sending dummy traffic from the first bridge over the second link downstream to the second bridge, so as to cause the second bridge to modify its database responsive to the second port being in the active state. *See, e.g.*, Dkt. No. 57-1, Claim 12. These methods and systems enable networks to rapidly reconfigure in response to changes in network topology.

### **B. The '279 Patent**

The '279 Patent provides an improved method for routing data flow in a network by using a "dispatcher" node that dynamically assesses resource availability across the plurality of paths in a network. This functionality allows the system to update costs automatically, while the network

is running, in response to network resource constraints, thus allowing for a more efficient transmission of network traffic.

### **C. The '637 Patent**

The '637 Patent provides improved methods for rapidly initiating the diversion of network traffic from a topology with a failed network link to a backup topology. The methods outlined in this patent overcome the limitations of prior art systems, which relied on the upper layers of a network to identify a loss of connectivity before transferring traffic to a backup set of links, which was a slow process and often took several minutes. The '637 Patent's invention reduces the time for this switchover to mere seconds, thus providing an improved system for traffic diversion process.

### **D. The '394 Patent**

The '394 patent is directed to efficiently forwarding multicast packets in a network. The claimed methods and devices of the '394 patent disclose storing lists in each processing unit indicating which multicast packet streams are allowed to be forwarded over the ports, distributing a multicast content request among multiple processing units, updating the lists for each processing unit, and selectively forwarding multicast packets based on the updated lists in each processing unit. The '394 patent also discloses ways to adjust to other changes in the network, such as when a new line card is inserted. For example, the claimed system may disable local ports of the newly-added line card and transmit a multicast status update request, which allows the newly-added processing unit to stay up-to-date. These methods and systems enable a multicast network to adapt to changes in multicast forwarding configurations in a way that minimizes response or lag time.

## **III. LEGAL PRINCIPLES**

“[T]he words of a claim are generally given their ordinary and customary meaning [which is] the meaning that the term would have to a person of ordinary skill in the art in question at the

time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005). “[T]he ordinary meaning of a claim term is its meaning to the ordinary artisan after reading the entire patent.” *Id.* at 1321. The patent specification “is always highly relevant to the claim construction analysis.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

However, “even when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using words or expressions of manifest exclusion or restriction.” *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1372 (Fed. Cir. 2014) quoting *Liebel–Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004).

Courts may also rely on “extrinsic evidence,” which “consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995). Expert testimony can be useful “to ensure that the court’s understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.” *Id.*

#### **IV. CLAIM CONSTRUCTION OF THE ’986 PATENT**

##### **A. “edge switch”**

The term edge switch is readily understood by one of skill in the art and does not require construction. To the extent the term needs any construction, it should be given its plain and ordinary meaning, which is “a switch located at the edge of a network.” This construction is supported by the intrinsic evidence. *See, e.g.*, Dkt. No. 57-1, Abstract; Figs. 1-3; 1:26-38; 2:7-22; 3:15-41; 3:65-4:54; 7:9-8:44; 9:11-10:50. For example, Figure 1 of the ’986 patent discloses a system where access switch 26 and access switch 27 provide access to network 20. *See id.*, Fig.

1. Portsmouth's construction is also consistent with the understanding of a POSITA and the extrinsic evidence. *See* Ex. A, Declaration of Dr. James Olivier in Support of Portsmouth's Claim Construction Positions ("Olivier Declaration"), ¶ 22. For example, Newton's Telecom Dictionary defines an edge switch as "[a] Broadband Switching System which is located at the edge of the network." Ex. A at Ex. 2 (PNC-CSC0027044).

Cisco improperly reads in limitations into its construction that are not the plain and ordinary meaning of this term. Specifically, Cisco construes edge switch to be "core switch that is directly connected to (an) access switch(es)." *See* Dkt. No. 72 at 3. Although Cisco's construction refers to language found in the specification, such limitations are not present in the claims themselves. *See* '986 patent, 1:26-38. It is well-established that limitations and embodiments from the specification should not be read into the claims. *See Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 904 (Fed. Cir. 2004) ("it is improper to read a limitation from the specification into the claims"); *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1371 (Fed. Cir. 2003) (holding that it was improper to read a specific order of steps from the specification into method claims because the specification did not include any disclaimer of any other order of steps); *Comark Commc'n, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) ("Although the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims."). As Dr. Olivier explains in his declaration, the claims make clear that an edge switch does not have to be a core switch that is directly connected to an access switch. *See* Olivier Declaration, ¶¶ 20-22.

Furthermore, Cisco's construction would only cause confusion by introducing a definition that itself depends on the definition of other types of switches, such as core switches and access

switches. Cisco's proposed construction of edge switch also would only further muddy the waters because the meaning of "access switch," which is part of Cisco's proposed definition of edge switch, is also disputed by the parties. Cisco's proposed construction also adds additional ambiguity to the claims. For example, Cisco does not address how a switch is "directly connected" to an access switch, and a POSITA would not understand the particular requirements of Cisco's proposed definition without additional detail. This goes against the basic purpose of the claim construction process, which is to provide clarity to a claim term's meaning.

## **B. "access switch"**

The term "access switch" needs no construction. To the extent that this term needs any construction, it should be given its plain and ordinary meaning which is "a switch providing access to a network." This construction is supported by the intrinsic evidence. *See, e.g.*, Dkt. No. 57-1, Figs. 1, 2A; 1:26-38; 4:50-54; 7:8-22. Portsmouth's construction is also consistent with the understanding of a POSA. Olivier Declaration, ¶¶ 23-24.

Cisco seeks to construe access switch as a "switch with ports that connect to LANs and/or to other network endpoints." While an access switch can connect to LANs and network endpoints, the claims of the '986 patent do not impose such a requirement. The '986 patent specification also makes clear that an access switch is not limited to connecting to LANs and that other network configurations may exist in other embodiments. *See* '986 patent at 7:36-38. Thus, an access switch is not limited to the single embodiment that Cisco cites. *See, e.g., Liebel-Flarsheim Co.*, 358 F.3d at 904 (Fed. Cir. 2004) ("it is improper to read a limitation from the specification into the claims"); *Luv N' Care, Ltd. v. Jackel Int'l Ltd.*, No. 2:14-CV-855-JRG, 115 F.Supp.3d 808, 823 (E.D. Tex. July 20, 2015) ("The Court finds that the examples in the specification are non-limiting embodiments of the invention that should not be imported into the claims.").

## V. CLAIM CONSTRUCTION OF THE '279 PATENT

### A. “predetermined”

The term “predetermined” needs no construction. A person of ordinary skill in the art would apply the plain and ordinary meaning to this term, which is “to determine beforehand.” Olivier Declaration, ¶ 28. This construction is further supported by extrinsic evidence. For example, Merriam Webster’s Collegiate Dictionary defines “predetermined” as “to determine beforehand.” Ex. A at Ex. 3 (PNC-CSC0027040). The term “predetermined” has a “well-established meaning[] that [is] readily applicable” in the context of the '279 Patent. *Whirlpool Corp. v. TST Water, LLC*, No. 2:15-CV-1528-JRG, 2016 WL 3959811, at \*15 (E.D. Tex. July 22, 2016) (finding “no further construction is necessary, particularly in light of the extrinsic dictionary definitions submitted by Plaintiff.”).

Defendant’s proposed construction, “determined before the data flow request,” improperly imports temporal limitations that are not inherent to the term “predetermined.” Specifically, nothing in the claim language or the specification limits the term “predetermined” to just the time period before the data flow request. Defendant’s disclosures provide no evidence to support its position. In fact, based on the language of the claims, the quantity of the quantum can be determined at any point before the system increases “the allocation of resources to the first node on the selected path by a predetermined quantum,” and therefore is not limited to “before the data flow request” as proposed by Defendant. Dkt. No. 57-2, claim 1. In fact, this Court has previously refrained from introducing similar temporal limitations to non-technical terms with plain meanings. In *BMC Software*, the Court determined that the term “periodically” should be giving its “plain and ordinary meaning,” without requiring that the actual “period” of time be construed. *BMC Software, Inc. v. ServiceNow, Inc.*, No. 2:14-CV-903-JRG, 2015 WL 4776970, at \*20 (E.D. Tex. Aug. 13, 2015) (finding that the “intrinsic evidence informs a person of ordinary skill in the

art of the scope of the claims with reasonable certainty.” Thus, “predetermined” should be accorded its plain and ordinary meaning.

**B. “quantum”**

The term “quantum” requires no construction. A person of ordinary skill would apply the plain and ordinary meaning to this term, which is simply an “amount.” Olivier Declaration, ¶ 31.

This construction is supported by intrinsic evidence. The specification of the ’279 Patent describes “node quantum” as the “*amount* by which to increase or decrease node\_used\_In or Out at each resource allocation or deallocation.” Dkt. No. 57-2, 5:26-30.

Defendant’s proposed construction of “an amount of a requested resource by which to increase or decrease” improperly reads limitations into this term. Nothing in the language of the claims or the specification requires that the actions of “increase[ing] or decreas[ing]” should be read into the term “quantum” itself. This is improper. This Court has previously rejected constructions that “impermissibly attempt[] to import limitations from the specification.” *Abstrax, Inc. v. Hewlett-Packard Co.*, No. 2:14-CV-158-JRG, 2015 WL 156555, at \*8 (E.D. Tex. Jan. 12, 2015). Furthermore, the claim language and the specification do not support limiting the term “quantum” to only the “amount of the requested resource.” For example, the ’279 Patent describes a “resource retainment step” in which a node instead of “returning a quantum to the dispatcher...keeps the [quantum] for subsequent use.” Dkt. No. 57-2, 7:20-24. This clearly shows that the term “quantum” is not tied to any specific request. Thus, Defendant’s construction of this term is too narrow and improperly attempts to add extraneous limitations to the term.

**VI. CLAIM CONSTRUCTION OF THE ’637 PATENT**

**A. “a network”/ “a communication network”**

The term “a network” or a “communication network” requires no construction. This term is readily understood by one of skill in the art. To the extent this term is construed, it should be

given its plain and ordinary meaning, which is “two or more stations capable of intercommunication.” Olivier Declaration, ¶ 46.

Defendant’s proposed construction of “a VPLS network” is too narrow and contrary to the claims and the specification of the ’637 Patent. The claims of the ’637 Patent do not limit network or communication network to only a VPLS network. In fact, the “Field of the Invention” section of the ’637 Patent provides that the “present invention relates generally to communication networks.” Dkt. No. 57-4, 1:16-17. While this section notes that the invention relates “particularly to methods and systems for providing virtual private LAN services (VPLS),” it does not limit the scope of the invention to just VPLS systems. *Id.* Defendant relies on the embodiments disclosed in the specification of the ’637 Patent, which relate to VPLS systems, to support its construction. However, “examples in the specification are non-limiting embodiments of the invention that should not be imported into the claims.” *Abstrax, Inc.*, 2015 WL 156555, at \*5.

**B. “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”**

“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” are phrases that a POSITA would understand without any construction based on their plain language. Olivier Declaration, ¶ 49.

Defendant’s proposed construction of “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,” reads in additional language into the claims and unnecessarily introduces “the detecting node” into both claims 1 and 16. However, a POSITA would understand the claim language based on the express language of the claim limitation, without the “add[ition] [of] language that is separately recited in the claims.”

*Astute Tech., LLC v. Learners Dig. Int'l LLC*, No. 2:12-CV-689-JRG, 2014 WL 1385191, at \*19 (E.D. Tex. Apr. 2, 2014) (rejecting proposed construction “as being superfluous with surrounding claim language,” and finding that “there is no need to include this separately claimed language” in the construction.).

## VII. CLAIM CONSTRUCTION OF THE '394 PATENT

### A. “a high-capacity port”

In email correspondence dated October 21, 2024, Cisco agreed to Portsmouth’s construction of “a high-capacity port” as meaning “a port formed by aggregating two or more ports.” Accordingly, the construction of this term is no longer in dispute.

### B. “a new processing unit added to the network element”

The term “a new processing unit added to the network element” does not have a specific meaning in the art. However, a POSITA would understand the plain language of the term without the need for any additional construction in view of the '394 patent’s disclosure. *See* Olivier Declaration, ¶¶ 38-39. For example, the '394 patent specification discloses that a processing unit can be a line card and that a new line card can be “inserted into an active network element.” Dkt. No. 57-3, 9:41-43; *see also id.* at 6:47-49 (“line cards 36 can be inserted and removed (“hot swapped”) while the network element is operational.”); 6:23-24 (“Network element 32 comprises multiple processing units, such as line cards 36.”). A POSITA would therefore understand that “a new processing unit added to the network element” means precisely what the plain meaning of those words mean, which is simply to add a processing unit to the network element.

Cisco proposes that a “a new processing unit added to the network element” should mean “a processing unit newly-inserted into the network element.” Dkt. No. 72 at 9. Again, Cisco attempts to read limitations from the specification into the claims. Specifically, Cisco’s proposed construction appears to rely on a single sentence of the '394 patent specification, which discloses

that “[w]hen the database and counters are up-to-date (or after a certain time out), the NP activates the ports of the *newly-inserted line card*, and may start normal operation.” Dkt. No. 57-3, 9:51-53 (emphasis added). As discussed above, Cisco’s proposed construction improperly limits the claims to an example in the specification, but the claim is not necessary limited to only that example. Furthermore, Cisco’s proposed construction merely adds additional ambiguity to the claims. For example, Cisco does not address how soon a processing unit must be inserted for it to be considered “newly-inserted,” and a POSITA would not understand the particular temporal requirements of Cisco’s proposed definition without additional detail.

Therefore, “a new processing unit added to the network element” should be defined by the plain and ordinary meaning of the term.

**C. “multicast packet stream”**

The term “multicast packet stream” is readily understood by one of skill in the art and does not require construction. To the extent the term needs any construction, it should be given its plain and ordinary meaning, which is “a packet stream that can be sent to multiple devices.” This construction is supported by the intrinsic evidence. *See, e.g.*, Dkt. No. 57-3, Abstract; Figs. 1-4; 1:12-14; 5:61-64; 5:66-6:3. For example, the ’394 patent discloses “[a]t least some of the traffic communicated over network 20 comprises multicast traffic, i.e., streams of multicast packets that are addressed to multiple recipients.” *Id.*, 5:61-64. Portsmouth’s construction is also consistent with the understanding of a POSITA and the extrinsic evidence. *See* Ex. A, ¶¶ 40-45. For example, Newton’s Telecom Dictionary discloses that “[m]ulticast packets are addressed to multiple devices within a group of devices.” Ex. A at Ex. 4 (PNC-CSC002750).

Cisco improperly reads in limitations into its construction that are not the plain and ordinary meaning of this term. Specifically, Cisco construes “multicast packet stream” to require “a channel or movie.” *See* Dkt. No. 72 at 10. Although Cisco’s construction refers to language

found in the specification, such limitations are not present in the claims themselves. It is well-established that limitations and embodiments from the specification should not be read into the claims. *See Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 904 (Fed. Cir. 2004) (“it is improper to read a limitation from the specification into the claims”); *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1371 (Fed. Cir. 2003) (holding that it was improper to read a specific order of steps from the specification into method claims because the specification did not include any disclaimer of any other order of steps); *Comark Commc’n, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (“Although the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims.”). As Dr. Olivier explains in his declaration, the claims make clear that a multicast packet stream does not have such limitations. *See* Olivier Declaration, ¶ 45.

Therefore, “multicast packet stream” should be defined by the plain and ordinary meaning of the term.

## VIII. CONCLUSION

For at least the foregoing reasons, Portsmouth respectfully requests that the Court adopt Portsmouth’s proposed constructions for each of the disputed terms and reject Cisco’s proposed constructions.

Dated: October 23, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 23, 2024, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ James Nuttall

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