

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

WELLCOMEMAT, LLC,

Plaintiff,

v.

AYLO HOLDINGS S.à r.l., AYLO
FREESITES LTD., AYLO PREMIUM,
LTD., 9219-1568 QUEBEC, INC., and
JARROD BELTRAN,

Defendants.

C.A. No. 2:23-cv-483

JURY TRIAL DEMANDED

WELLCOMEMAT LLC'S OPENING CLAIM CONSTRUCTION BRIEF

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Plaintiff WellcomeMat LLC files this opening claim construction brief to address the 20 terms of U.S. Patent No. 8,307,286 (the '286 Patent) (attached as Ex. 1) that the Aylo Defendants still identify for construction, including the 12 terms that Defendants still argue (without any expert support) are indefinite. The Court should reject each of Defendants' constructions and arguments and instead adopt Plaintiff's constructions—which, unlike Defendants' positions, are supported by the exhaustive declarations of Plaintiff's technical expert: Dr. Scott Schaefer.¹

As an initial matter, Defendants have all but admitted that their arguments for many of their terms not only are wrong but are intended simply to require Plaintiff to spend time (and pages) addressing them—telling Plaintiff “[d]on’t be surprised however if we drop these terms in our responsive brief **after you spent needless time briefing them**.” Ex. 10 at 7. That includes Terms 2, 3, 5, 12, 14, and 18, each of which Defendants admit should be construed to have its plain and ordinary meaning just as (with one exception) Plaintiff has always argued. *Id.* at 4-5; Dkt. 210.

Unfortunately, the Court still needs to address each of these terms because—despite their admission—Defendants refused to withdraw those terms unless Plaintiff agreed that it would not “argue for any of these terms that the proposed construction or alternative construction it has previously presented should apply.” *Id.* at 4, 15-16. As Plaintiff told Defendants, that condition is unworkable as Plaintiff absolutely intends to argue that both its proposed constructions and Dr. Schaefer's explanations regarding each fall within the plain and ordinary meaning of each term. *Id.* at 1. Equally problematic, Defendants also reserved the right to argue later that the constructions they were abandoning nevertheless limited the plain and ordinary meaning of each term. *Id.*

¹ In his two declarations (Exhibits 2 & 3), Dr. Schaefer—the Head of the Department of Computer Science & Engineering at Texas A&M—addresses every term Defendants identified as indefinite and explains why a person of ordinary skill in the art at the time of the invention (“POSITA”) would understand each with reasonable certainty. Plaintiff cites to such declarations below and summarizes their relevant portions to the extent possible given page constraints.

Accordingly, Plaintiff needs the Court to address each term to preclude Defendants from later trying to backdoor their incorrect constructions under the guise of plain and ordinary meaning.

Fortunately, the Court can make quick work of Defendants’ arguments and constructions for all of its terms. All are squarely refuted by the patent itself. Further, Defendants have submitted no expert support for any of their positions, including their indefiniteness arguments. Instead, they rely solely on unsupported attorney arguments, which this Court has held “is insufficient to carry [their] burden of proving invalidity by clear and convincing evidence.” *Allergan Sales, LLC v. Sandoz Inc.*, No. 2:12-cv-207-JRG, 2016 WL 1224868, at *18 (E.D. Tex. Mar. 29, 2016) (holding that indefiniteness argument consisting of “attorney argument with no supporting expert testimony or other factual evidence ... is insufficient to carry its burden” by clear and convincing evidence).

A. BACKGROUND OF THE INVENTION

Plaintiff has submitted a tutorial explaining the background of the invention, as well as the basic principles on which it is based.

B. ADDITIONAL AGREED TERMS

Since filing their Second Joint Claim Construction and Prehearing Statement (Dkt. 210), the parties have agreed to the following additional construction:

#	Term	Agreed Construction
1	“video editing environment” / “video editing module” [Claims 13, 14, 15, 19, 21, 23, 24, 26, 27, 28]	“software, including a program, application, or webpage, for video editing”

Ex. 10 at 14-15. Also, after Plaintiff moved for an extension of the page limits for this brief, Defendants confirmed that they were abandoned their indefiniteness arguments as to each of the following five terms, agreeing each should be construed to have its plain and ordinary meaning:

#	Term
16	“the server video data” [Claim 20]
17	“configured to run, over the public network” / “configured to run the video editing module

	over the public network” [Claims 21, 22, 26, 27, 28]
20	“a cue point” [Claim 21]
22	“the video file” [Claims 22, 24]
26	“the server-side video information” [Claim 28]

Id. at 2. Plaintiff thus asks the Court to construe each to have that meaning.

C. DISPUTED TERMS²

2. “receiving ... at the video editing environment” [Claim 13]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning.	“receiving ... by the video editing environment”

The dispute regarding this term is simple: Claim 13 requires “receiving ... at the video editing environment.” Defendants nevertheless argue that it should be construed such that it requires “receiving ... by the video editing environment.” There is no reason for the Court to rewrite the claim in this way—a reality shown by Defendants’ on-again/off-again concession that the term should really be construed as Plaintiff contends. Ex. 10 at 4-5 (admitting this term should be construed to have its plain and ordinary meaning). Certainly, as this Court has explained, “[c]ourts do not rewrite claims; instead, we give effect to the terms chosen by the patentee.” *Effective Expl., LLC v. Bluestone Nat. Res. II, LLC*, No. 2:16-CV-00607-JRG-RSP, 2017 WL 3193322, at *15 (E.D. Tex. July 27, 2017) (citation omitted) (rejecting construction). And that is particularly the case here where the claim itself specifies what is to receive the information at issue. As both “receiving” limitations state, Claim 13 requires “receiving” the relevant information “at the video editing environment using the computer system” it comprises. Ex. 1 at 55:5-8.

3. “set of video information” / “set of cue point information” [Claim 13]

Term	WellcomeMat’s Construction	Aylo’s Construction
“set of video information”	Plain and ordinary meaning. <i>Alternatively</i> , “one or more bits of video information”	“video data from multiple video files”

² Plaintiff has numbered its arguments to match the term numbering in the parties’ Second Joint Claim Construction and Prehearing Statement (Dkt. 210). It thus starts with Term 2.

“set of cue point information”	Plain and ordinary meaning. <i>Alternatively</i> , “one or more bits of cue point information”	“cue point data from multiple cue points”
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The first dispute regarding each of these terms is whether “set” means “one or more” or requires “multiple.” Both the intrinsic and extrinsic evidence demonstrate that, as used in the ’286 Patent, “set” means “one or more.” Indeed, the specification explicitly teaches that a set can include only one object. For example, it teaches at 24:45-47 how, in one example, “the network 430 may comprise **a set** of data transmission channels, **like a cable**,” i.e., a single object.

Extrinsic evidence echoes the specification’s teaching. As Dr. Schaefer explains, it was understood in the art that a “set” may include “only one member.” Ex. 2 (Schaefer Decl.) ¶ 26; *accord id.* ¶¶ 22-32. And in addition to pointing to his own understanding of that fact, Dr. Schaefer also pointed to a treatise on “Elements of Set Theory,” including its confirmatory teaching that a “small set would be a set {0} **having only one member**.” *Id.* at ¶ 26 (quoting Ex. 5 at 2).

Claim differentiation principles also show that Defendants’ construction is wrong. For example, the claims themselves reflect that the patentees used different words when they intended to impose a plural requirement. Claim 21 recites a “**plurality** of remote client terminals,” and Claim 25 recites “**multiple** cue points.” The specification contains similar disclosures. Ex. 2 ¶¶ 29-30. As this Court has explained, disclosures like this raise a presumption that “the words have different meanings”—one that can be overcome only if the intrinsic evidence demonstrates a different understanding. *Optis Cellular Tech., LLC v. Kyocera Corp.*, No. 2:16-cv-0059-JRG-RSP, 2017 WL 541298, at *13 (E.D. Tex. Feb. 9, 2017) (citations omitted). And here, as explained, the patent does the opposite: it expressly states at 24:45-47 that a “set” may include only one object.

Second, Defendants’ constructions also are wrong because they conflate “video information” with “video files” and “cue point information” with “cue points.” Ex. 2 ¶¶ 33-35, ¶¶ 144-146. Specifically, the first “set” term requires a “set of **video information**.” And the patent

teaches that “video information” (also referred to as “video data”) is not the same as a “video file.” Rather, the patent teaches at 7:49-66 that “a video file contains video information.” Ex. 2 ¶ 144 (explaining that Claim 13 recites “a portion of the video information of one of the video files”).

Further, the patent teaches that a single video file may comprise multiple pieces of video information. For example, it teaches at 7:63-66 that “cue points may point to a specific number of [plural] bits of digital video data from the beginning or end of a [single] video file.” And it teaches at 7:9-14 that “video data may include visual data, [and] audio data.” Ex. 2 ¶¶ 34-35. As such, even if “set” is construed to mean “multiple” (and, as explained above, it should not be), a “set of video information” would only require multiple pieces of **video information, all of which could make up or comprise a single video file.** Ex. 2 ¶¶ 33-35 (discussing evidence showing that a single video file may include multiple pieces of video information/data).

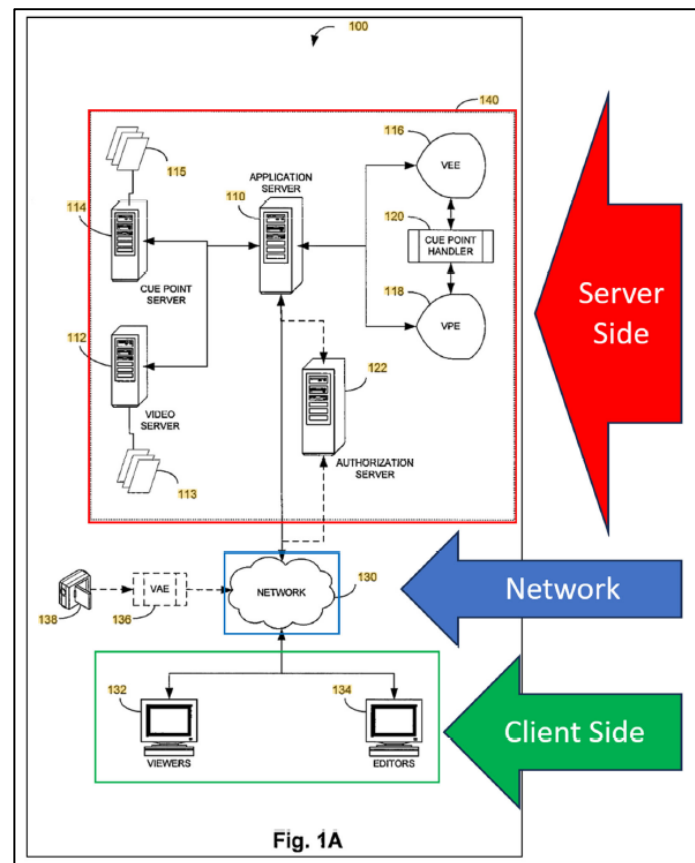
Defendants’ construction of “set of cue point information” fails for the same reason: it conflates “cue point information” with a “cue point.” Again, the two are not the same. Rather, the patent teaches at 19:38-53 that “many types of cue point information may be possible”—listing examples. *See also* Ex. 1 at 7:49-8:38, 29:16-28. And the patent teaches at 19:54-61 that a single cue point may comprise “some” (e.g., one) or “all” (i.e., plural) “of the various types of cue point information” that exist. In short, even if “set” means “multiple” as Defendants argue (and it does not), the presence of multiple cue point information does not require multiple cue points. Multiple cue point information could relate to a single cue point. Accordingly, it would be error to rewrite the claim to replace the recited “cue point information” with “cue points.”

4. “disposed at a server side of a public network” [Claim 13]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning. <i>Alternatively</i> , “disposed at a side of a public network comprising the video editing environment.”	“disposed at a side of a public network that functions only as a server.” If “server side” can also function as a client, this term is indefinite.”

As explained in Plaintiffs’ tutorial, a core innovation of the ’286 Patent is its “public client-server architecture,” which allows for “remote editing of and/or interaction with cue points associated with a video file” such that, in at least some embodiments, one “can use a standard web browser to create and modify ... cue points remotely, via a remote video environment running on an application server” without needing “local storage of the data at the client terminal performing the editing” or “dedicated local video editing capability.” Ex. 4 (File History) at 111-112.

And the patent provides clear examples of that architecture, including in Fig. 1A—contrasting the “client side” from the “server side” based on their location with respect to the public network, as well as the location of the “video editing environment” (“VEE”). Ex. 2 ¶¶ 36-66. For example, in describing Fig. 1A, the patent teaches at 10:54-58 that the “server side” comprises “the application server 110, video server 112, cue point server 114, authorization server 122, and all the applications associated with those servers, **including the VEE 116** and VPE 118.” Ex. 2 ¶¶ 42-44.



Moreover, the patent also describes the “client side” of the public network—teaching that it comprises the side of the public network where one or more clients are located, which the patent teaches at 11:50-53 are the entities “requesting access to the video environment or application (the client).” See also Ex. 1 at 23:66-24:1. For example, the specification teaches at 24:60-62 that “[t]he

client may enter the VEE 510 by executing an application invoking various software and/or hardware commands, accessing a webpage, or in any other useful way.” Ex. 2 ¶ 46.

As Dr. Schaefer explains, such disclosures not only are easy to follow, but consistent with how a POSITA would have understood the terms “server” and “client” at the time of the invention. For example, the *Microsoft Computer Dictionary* (Ex. 6) explains at page 44 that “[t]he application that exposes an object for use is called the server; the application that manipulates the object is called the client”; similarly, *An Introduction to Client Server Computing* (Ex. 7) explains at page v that, since “the 1980s,” it has been understood that “[a] client is defined as a requester of services and a server is defined as the provider of services.” Ex. 2 ¶¶ 55-56.

Given the patent’s intrinsic disclosures, along with the plain understanding the cited extrinsic references demonstrate, how the “server side” and “client side” can be identified is easily determined: consistent with the distributed “architecture” the patentees emphasized during prosecution, the “sides” are determined by (1) their functions, including the location of the “video editing environment” (“VEE”) functionality and (2) the location of the required “public network.” Ex. 2 ¶¶ 48-52 (quoting portions of patent showing VEE is on the server side).

As these disclosures show, there is no need to construe this term. Its meaning is clear from the plain language of the claim, which recites “one computer readable medium **comprising a video editing environment**, and being disposed **at a server side of a public network**.” Ex. 1 at 55:1-4.

But if the Court does construe the term, it should reject Defendants’ construction, as well as their fallback indefiniteness argument. To be clear, nothing requires that the “server side” comprise only servers. Rather, the patent teaches the opposite, including by teaching that the components it labels as “servers” may not be physical servers. Ex. 2 ¶¶ 59-66.

For example, the patent teaches at 9:19-29 that non “server” components may exist on the

“server side,” including “various applications, including a Video Editing Environment (VEE) 116 and/or a Video Playback Environment (VPE) 118,” which the specification describes as “programs [that] may be stored on the application server 110, runnable (able to be executed, performed, effectuated, etc.), by the application server 110, or handled by the application server 110 in some other useful way.” Similarly, at 7:1-4, the patent teaches that “[t]he application server 110 may be a dedicated server computer, a set or network of computers, an [sic] runnable file, **or any other component capable of serving the desired program functions to a client.**” It likewise describes the video server at 7:15-24 as not requiring a traditional server, explaining that “the video server 112 may be a dedicated computer or network of computers” or simply “**may comprise a list stored in one or more files.**” In short, just like the *Microsoft Computer Dictionary* and *An Introduction to Client Server Computing*, the patent is concerned with function—not form.

Further, Defendants themselves admit that a component may function as a server for one purpose and a client for another—explaining (correctly) that it is understood in the art that “a client of a server can also be a server to another client.” *Compare* Ex. 8 (Aylo Invalidity Contentions) at 51, *with* Ex. 2 ¶ 77 (confirming same understanding). That understanding also is supported by the *An Introduction to Client Server Computing* textbook. Ex. 2 ¶ 56. For example, it explains at page v how “[a] single machine can be both a client and a server depending on the software configuration.” *Id.* The patent says nothing to the contrary. It never teaches—much less requires—that its “server side” components operate any different from the traditional, expected manner.

In sum, the Court should reject both Defendants’ “functions only as a server” construction and their fallback indefiniteness argument and construe the term to have its plain and ordinary meaning. *Id.* ¶¶ 59-79 (confirming a POSITA would understand term with reasonable certainty).

5. “set of cue point information” [Claim 13]

Plaintiff addresses this term above at pages 5-7.

6. “cue point information” [Claims 13, 14, 17, 21, 22]

WellcomeMat’s Construction	Aylo’s Construction
“cue point information associated with video data”	“cue point data, including at least a start time position and end time position”

Plaintiff proposes the same construction for this term that it proposed in its opposition to Defendants’ § 101 motion. Dkt. 29. As Plaintiff explained, that construction is squarely in line with the patent’s teaching in the Summary of the Invention at 2:48-50 that the invention is directed to “methods and systems for handling online video ... using cue point information.”

In contrast, Defendants’ construction directly contradicts the patent’s teachings. For example, while the patent teaches at 19:38-53 that a “time position within [a] video file” is one example of possible cue point information, it explains in the same passage that “many types of cue point information may be possible”—listing other examples. And even for embodiments that use “time position” cue point information, the patent teaches that it is not necessary to have “a start time position and end time position.” Instead, it teaches at 8:26-38 that, “[i]n some embodiments, the cue point refers only to a start or end time position of a particular video event.”

7. “cue point editing command” [Claims 13, 14]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning.	“command to edit one of the cue points in the set of cue point information”

As an initial matter, this term does not require construction. *BMC Software, Inc. v. ServiceNow, Inc.*, No. 2:14-CV-903-JRG, 2015 WL 4776970, at *24 (E.D. Tex. Aug. 13, 2015) (rejecting construction as “redundant” where the claims already specified what the “recited ‘service monitor’” does). Rather, the meaning of “cue point editing command” is clear in the context of the claims, which—to the extent necessary—specify what the “cue point editing command” does. For example, Claim 13 recites “modifying a portion of the cue point information ... according to the cue point editing command.” And Claim 14 recites providing a

mode configured “to perform at least one of creating, modifying, deleting, or interpreting at least a portion of **the set of cue point information** according to the cue point editing command.”

Further, Defendants’ construction also fails because it (again) conflates “cue points” with “cue point information.” As the text emphasized above shows, the cue point editing command modifies and/or interacts with “**cue point information**”—not cue points. And as explained above at page 7, the two are not the same. Rather, the patent teaches at 19:54-61 that a cue point is comprised “of the various types of cue point information” that may exist and that a single cue point may comprise “some” **or “all”** of such information. In short, a single cue point may comprise multiple pieces of cue point information. As such, even if “set” means “multiple” as Defendants argue (and it does not), the fact that the claims recite that the cue point editing command can modify “a portion of the cue point information” (Claim 13) or interact with “at least a portion of the set of cue point information” (Claim 14) in no way supports Defendants’ construction, which requires that there be multiple “cue points” and that the cue point command edit one of them.

8. “remote client terminal” [Claims 13, 18, 19, 20, 21, 22, 23, 26, 27, 28]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning.	Indefinite.

Defendants contend this term is indefinite because it includes the word “remote,” which Defendants contend (with zero expert support) renders all asserted claims indefinite because “(i) there is no reference baseline against which the subject ‘remote client terminal’ is compared for ‘remote’-ness; and (ii) there is no metric for assessing ‘remote’-ness.” Ex. 8 at 50. As Dr. Schaefer explains, Defendants are wrong. Ex. 2 ¶¶ 80-94 (confirming POSITA would understand this term).

In particular, Dr. Schaefer confirmed that “the word ‘remote’ is a basic and well understood term that had a well-accepted meaning in the art at the time of the invention”—explaining:

“The application that exposes an object for use is called the server; the application that manipulates the object is called the client.” And the *Microsoft Computer*

Dictionary further explains [at page 44] that such “client” “can be either local or **remote (on a computer elsewhere on a network)**.” Consistent with that example, the *Microsoft Computer Dictionary* thus defines “remote” [at page 448] to mean “**[n]ot in the immediate vicinity, as a computer or other device located in another place (room, building, or city) and accessible through some type of cable or communications link.**”

Id. ¶¶ 86-89. Other references disclose the same. For example, *An Introduction to Client Server Computing* explains at page v that “Client and Server processes can reside in [the] same computer **or in different computers linked by a network.**” *Id.* ¶¶ 56, 106. As a POSITA would understand, the “different computers” embodiment is an example of the client being “remote.” *Id.* ¶¶ 87-92.

These understanding are confirmed by the patent, which describes the “client terminal” as physically distinct from the server-side components. *Id.* ¶ 92. They also are confirmed by Defendants’ admission that it was understood that “a client can ‘remote’ into a server.” *Id.*

Given these disclosures and understandings, Dr. Schaefer thus confirmed that a POSITA would understand “the word ‘remote’ requires only that the relevant ‘client terminal(s)’ be distinct [i.e., **“physically separate”**] from the recited ‘server side’ components with which the claims require” the remote client terminal communicate. *Id.* ¶¶ 92, 94. In doing so, Dr. Schaefer refuted Defendants’ no baseline argument—explaining the baseline is physical separateness and any POSITA “can distinguish whether one component is physically distinct from another.” *Id.* ¶ 93.

9. “disposed at a client side of the public network” [Claim 13]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning. <i>Alternatively</i> , “disposed at a side of a public network comprising the remote client terminal.”	“disposed at a side of a public network that functions only as a client.” If “client side” can also function as a server, this term is indefinite.

Defendants’ construction and its fallback indefiniteness argument fail for two reasons.

First, as Plaintiff explains above at pages 7-10, the meaning of “server side” and “client side” are clear—and reflected in the claim language itself. At least for purposes of Claim 13, the “server side of the public network” is the side of the public network that contains the “video editing

environment” or “VEE.” And the “client side of the public network” is the side of the public network that—as Claim 13 explicitly states—includes “a remote client terminal.” Ex. 2 ¶¶ 97-98.

Second, the patent itself refutes Defendants’ “functions only as a client” limitation. *Id.* ¶¶ 99-109. In particular, the patent teaches at 9:30-38 that “client terminals, includ[ing] viewer terminals 132 and editor terminals 134,” “may comprise any device or application capable of accessing the system 100 in a useful way.” And consistent with this disclosure, the patent includes an embodiment in which the client is a server—explaining at 24:32-40 how, “[i]n another example, **if the client terminal 410 is an automated computer system, the client may be a computer process which in [sic] interfaces with the terminal via various scripts, functions, algorithms, etc.**” such that, “[i]n this example, it would be unnecessary in some cases to provide human-usable input devices 424 and output devices 426, but may remain necessary to provide other types of input devices 424 and output devices 426, like ports, processors, etc.”

As Dr. Schaefer explained, a POSITA would understand such teaching to confirm that “a server can operate on the ‘client side’” of the recited public network. Ex. 2 ¶¶ 105-106. Further, he explained that the patent’s teaching is squarely in line with the common POSITA understanding that “[a] single machine can be both a client and a server.” *Id.* ¶ 106 (quoting *An Introduction to Client Server Computing* at page v). Indeed, even Defendants admit that “a client of a server can also be a server to another client.” Ex. 8 at 51. Dr. Schaefer thus confirmed that a POSITA would understand the term with reasonable certainty. Ex. 2 ¶¶ 99-112.

10. “modifying” [Claims 13, 14, 21, 25]³

WellcomeMat’s Construction	Aylo’s Construction
“modifying a portion of the cue-point information” should be	“changing, without

³ Plaintiff informed Defendants on March 6 that it was modifying its construction of this term in order to preclude Defendants from repackaging their claim construction argument to the jury as reflecting the plain and ordinary meaning of the term. Ex. 10 at 19-20.

construed to include “creating the cue point, deleting the cue point, temporally moving the cue point, editing a label associated with the cue point, or editing an association between multiple cue points including the cue point” as recited in Claim 25, and “modifying” as recited in Claim 14 should be construed to mean “modifying, including creating, deleting, moving, or editing”	creating or deleting”
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The “modifying” term appears in Claims 13 and 21 as part of the phrase “modifying a portion of the cue-point information.” And that phrase is defined in Claim 25, which states:

wherein **modifying a portion of the cue-point information** affects the corresponding cue point by **at least one of** [1] **creating the cue point**, [2] **deleting the cue point**, [3] temporally moving the cue point, [4] editing a label associated with the cue point, or [5] editing an association between multiple cue points including the cue point.

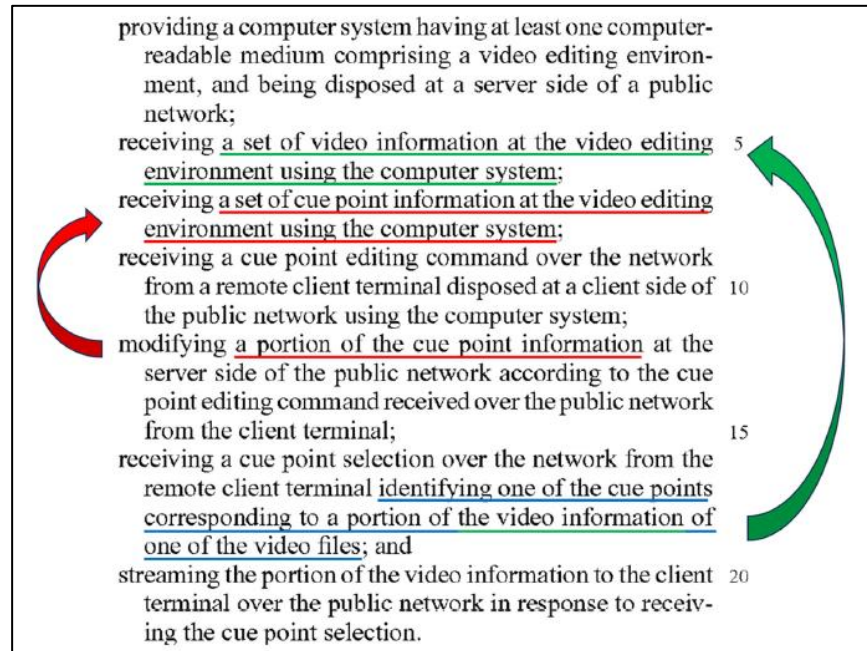
That express definition is dispositive. As this Court has held, “if a special definition is provided to a claim term by the patentee, the inventor’s lexicography governs.” *Nanoco Techs. Ltd. v. Samsung Elecs. Co., Ltd.*, No. 2:20-cv-00038-JRG-RSP, 2021 WL 1890453, at *7 (E.D. Tex. May 11, 2021) (citation omitted). And here, Aylo’s construction (which excludes “creating or deleting”) squarely conflicts with “the inventor’s lexicography.” Given that, Defendants’ construction is wrong and must be rejected. *Id.*; accord *Estech Sys., Inc. v. Target Corp.*, No. 2:20-cv-00123-JRG-RSP, 2021 WL 1090747, at *19 (E.D. Tex. Mar. 21, 2021) (construing term consistent with patent’s “unambiguous definition”); *Visto Corp. v. Research in Motion Ltd.*, 623 F. Supp. 2d 756, 778 (E.D. Tex. 2008) (rejecting construction because it “conflicts with the language of the claims”).

Further, as Defendants have shown they intend to argue at trial that the plain and ordinary meaning of “modify” does not include creating or deleting, Plaintiff asks the Court to adopt Plaintiff’s proposed constructions, which construe the terms as defined in Claim 25.

11. “identifying one of the cue points” [Claim 13]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning.	“identifying the one cue point that has been modified.” <i>Alternatively</i> , indefinite: unclear antecedent basis.

The term at issue appears as part of the phrase “identifying one of the cue points corresponding to a portion of the video information of one of the video files.” And as the plain language of that full phrase reflects, the recited “one of the cue points” corresponds to “a portion of the video information.” Ex. 2 ¶¶ 115-129. As shown by the green arrow in Dr. Schaefer’s annotated image below from Ex. 2 ¶ 127, “identifying one of the cue points corresponding to a portion of the video information” thus refers to the “receiving a set of video information” limitation—not to the “a portion of the cue point information” recited in the “modifying” limitation as Defendants contend.



Further, the fact that there is no prior reference to “a” cue point does not render the claim indefinite. The Federal Circuit has made that clear, explaining that “the lack of an antecedent basis does not render a claim indefinite as long as the claim ‘apprises one of ordinary skill in the art of its scope.’” *In re Downing*, 754 Fed. Appx. 988, 996 (Fed. Cir. 2018) (citation omitted). So has this Court. As it held in *BITCO*, so long as “the claim language itself is reasonably certain,” the fact that it “uses ‘the’ instead of ‘a’” does not render it indefinite. *Intellectual Ventures II LLC v. BITCO Gen. Ins. Corp.*, No. 6:15-cv-59-JRG, 2016 WL 125594, at *16 (E.D. Tex. Jan. 11, 2016).

And here, as Dr. Schaefer explains, the claim is reasonably certain. In particular, he explained that the patent is clear that cue points are associated with video data. Ex. 2 ¶¶ 130-134.

For example, it teaches at 15:10-11 how “**the video data may be associated with a set of cue point data relating to a set of cue points.**” As such, as Dr. Schaefer confirmed, a POSITA would understand the limitation at issue to require that the recited “one of the cue points” corresponds to the recited “set of video information.” Ex. 2 ¶ 134.

12. “corresponding to a portion of the video information of one of the video files” [Claim 13]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning. <i>Alternatively</i> , “corresponding to a portion of the video information of one video file.”	“corresponding to a start time position and end time position of the video data of one of the video files.” If “set of video information” does not mean “video data from multiple video files” then this term is indefinite due to unclear antecedent basis.

Defendants’ construction and indefiniteness argument are incorrect for at least two reasons—a reality confirmed by their admission just a few days ago that the term should be construed to have its plain and ordinary meaning as Plaintiff has always argued. Ex. 10 at 4.

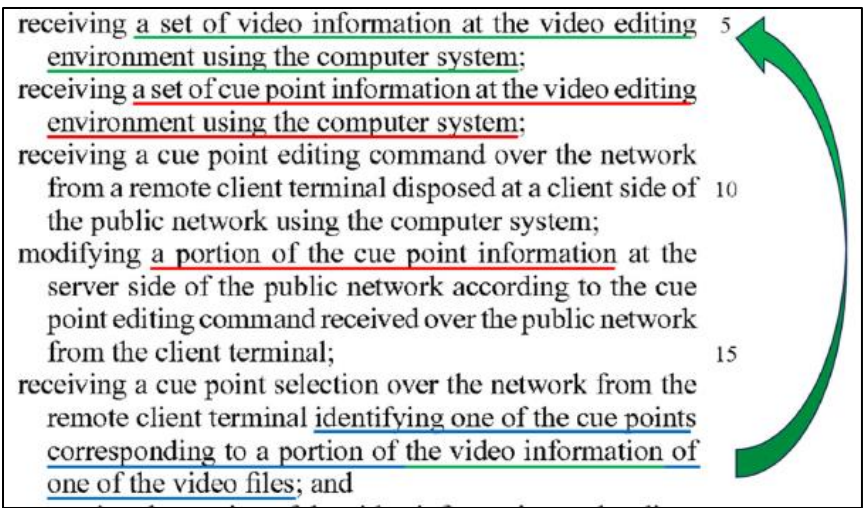
First, Defendants’ construction fails because it conflates “video information” with one example of “cue point information.” In particular, the patent teaches at 19:38-53 that identifying a “time position within [a] video file” is **one example of cue point information**. And while the patent teaches at 14:57-59 that “video data may comprise and/or be associated with ... cue point information,” it also teaches at 7:9-14 that “video data may include visual data, audio data, still frames, stop-time successions of images, virtual reality information (e.g. in Virtual Reality Markup Language (VRML)), three-dimensional modeling data, textual data, or any other information.”

Defendants’ construction thus would limit the term to one of the many possible examples of the “cue point information” the patent discloses. Ex. 2 ¶¶ 137-141 (confirming same). As this Court has held, that is improper. *BMC Software*, 2015 WL 4776970, at *9 (reiterating that, “[a]lthough 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” (citation omitted)). As such, the Court should reject Defendants’ construction because it would exclude a preferred embodiment.” *Id.* at *29.

Second, Defendants’ in-the-alternative indefiniteness argument also fails—particularly when the term is considered in the context of the full claim limitation, which recites “identifying one of the cue points corresponding to a portion of the video information of one of the video files.” Ex. 2 ¶¶ 142-147 (explaining that a POSITA would understand with reasonable certainty what this limitation requires). As shown below in the annotated image from ¶ 127 of Dr. Schaefer’s

first declaration (Ex. 2), “the video information” portion of the term shows that it refers back to the “a set of video information” referred to in the “receiving a set of video information” limitation. And



as explained above at page 7, regardless of how it is construed, “set of video information” does not require multiple video files. Accordingly, the language at issue is best understood as requiring simply what its plain language states. But to the extent the Court believes further construction would be helpful, the term should be construed to mean simply “corresponding to a portion of the video information of one video file” or “at least one video file.”

13. “interpreting at least a portion of the set of cue point information” [Claim 14]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning. <i>Alternatively</i> , “determining or identifying at least a portion of the set of cue point information.”	Indefinite.

Defendants have identified two reasons why they believe this term is indefinite, claiming:

(1) “the specification ... does not clearly define or explain what is meant by interpreting a cue

point information” and (2) “this term does not appear anywhere in the ’286 patent specification.” Ex. 8 at 53. Defendants’ arguments—supported (tellingly) by nothing but the unsupported arguments of their counsel—are wrong. As Dr. Schaefer explains, particularly when considered in the context of the full limitation, which recites in part “a cue point editing mode ... configured to perform ... interpreting at least a portion of the set of cue point information,” a POSITA would understand with more than reasonable certainty what this term requires. Ex. 2 ¶¶ 148-157.

In particular, as Dr. Schaefer explains, the specification not only refers to interpreting cue point information, but it provides examples of what it entails. For example, it teaches at 8:1-14 how the system may “detect” or “interpret” various cue point information, explaining:

Audio recognition may detect **and/or interpret**, for instance, changes in audio level (e.g. to automatically create a cue point wherever there is more than one second of silence), certain sounds (e.g. a beep or other audio cue), or even more complex sound patterns (e.g. a word, a particular voice, etc.). Video recognition may detect **and/or interpret**, for example, particular images (e.g. the shape of a house, a predefined video cue, an icon, etc.), text information (e.g. a word, a character, etc.), changes in video (e.g. a scene change, a static frame for a given amount of time, etc.), or even complex image patterns (e.g. the movement of a character into a new environment, different types of lighting conditions, etc.).

Ex. 2 ¶¶ 149-150. And the patent then describes at 15:40-49 how one embodiment of the cue point edit mode at issue permits cue point information to be detected or interpreted:

If the cue point edit mode has been entered 322-2, the method 300 may proceed by receiving cue point data 324. Different data may be received 324 from different locations. For example, cue point data may be received 324 from the client by entry from an input device (e.g. keyboard, mouse, voice input, etc.), from a cue point database containing related attributes, **by contextual inference (e.g. audio or image recognition from the video file, time or date information from the computer’s Basic Input Output System (BIOS), etc.), or from any other useful source.**

Ex. 2 ¶ 151. And even that is not all. Dr. Schaefer identified two additional passages in the patent disclosing how “interpreting can be used to ‘determine’ certain cue point information,” including one in which the specification discloses at least four examples of how such “interpreting” can

occur—explaining that the specification also refers to such “interpreting” as “inferring.” *Id.* ¶¶ 152-155 (quoting and discussing 19:60-20:4 and 21:46-61).

In sum, for the reasons Dr. Schaefer explains, Defendants’ indefiniteness arguments are meritless, and the term should be construed to have its plain and ordinary meaning. Ex. 2 ¶¶ 148-157. But if the Court believes construction would be helpful, it should construe the term to mean “determining or identifying at least a portion of the set of cue point information,” which Dr. Schaefer explained are the “basic concepts” to which “interpreting” is directed. *Id.* ¶ 155.

14. “generating, automatically by using the computer system” [Claim 17]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning. <i>Alternatively</i> , “using the computer system to generate, based on audio or video recognition, patterns of user activity, or other inputs or stimuli.”	Indefinite.

In support of their indefiniteness argument as to this term, Defendants argue (again, without any expert support or other evidence) that “the specification does not describe any function, process or capability of a computer system that allows a portion of a cue point information to be automatically generated.” Ex. 8 at 54. Again, Defendants are wrong—a reality demonstrated by their on-again/off-again admission that the term should be construed to have its plain and ordinary meaning as Plaintiff argues. Ex. 10 at 4-5. As Dr. Schaefer explains, a POSITA would understand with more than reasonable certainty what this term requires. Ex. 2 ¶¶ 158-168.

Specifically, the specification does exactly what Defendants claim it does not. For example, as shown above at page 19, it teaches at 8:1-14 how cue point information can be interpreted via “[a]udio” or “[v]ideo recognition.” And as Dr. Schaefer explains, the patent recites in the same passage how such recognition can be used to “**automatically** create a cue point”—teaching at 8:1-14 how “changes in audio level” could be “detect[ed] and/or interpret[ed], for instance” “e.g. to automatically create a cue point wherever there is more than one second of silence.” Ex. 2 ¶ 160.

Dr. Schaefer also explained that the patent teaches at 15:2-9 how “text information ... may be autogenerated based on audio or video recognition, [or] patterns of user activity.” *Id.* ¶ 161.

And while not required, Dr. Schaefer even identifies examples in the patent of how such functionality could be effectuated. For example, he pointed to 22:59-64, which teaches:

[T]he method 370 may determine that certain information will be provided automatically through detection or loading from another source. **For example, as the client enters cue point information into a cue point information form, the method 370 may determine that certain other information may be automatically generated. For another example, after providing the cue point information form to the client, the client may select a button which automatically fills in certain fields of the form.**

Ex. 2 ¶ 163. He also pointed to 28:31-44, which states:

The client used a client terminal to view the video file in a video editing environment, and entered the cue point editor mode by pausing playback of the video file at 34.03 seconds (see the video progress indicator 614 and the time indicator 618, showing the current elapsed playback time rounded to 34 seconds). As illustrated, **the cue point editor automatically generated a portion of the cue point information needed to create the cue point. For example, the cue point editor recorded the time position where the video was paused and is automatically displaying that information in the “Time” field 634.**

Ex. 2 ¶ 164; *accord id.* ¶ 165 (citing additional examples).

Dr. Schaefer even identified examples in the specification of how such functionality could be programmed, explaining it could be done “via various scripts, functions, algorithms, etc.” *Id.* ¶ 166. And he noted that extrinsic sources further confirmed his understanding. *Id.* ¶ 167.

In sum, Defendants’ argument is refuted by the patent itself, which Dr. Schaefer confirmed provides sufficient guidance for a POSITA to understand the term with reasonable certainty. Ex. 2 ¶¶ 158-168. It also is refuted by Defendants’ own admissions that the term should be construed to have its plain and ordinary meaning—just as Plaintiff has always contended. But if the Court believes construction would be helpful, it should adopt Plaintiff’s alternative construction, which Dr. Schaefer explains mirrors the patent’s various related disclosures. *Id.* ¶¶ 160-168.

15. “access authority of the remote client terminal” [Claims 18, 19]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning.	“access authority based on the remote client terminal’s attributes”

This term does not require construction. Rather, its meaning is clear—as demonstrated by the fact that Defendants’ proposed construction makes no attempt to construe the words “access authority” or “remote client terminal” and instead simply seeks (improperly) to limit such “access authority” to one of the several authorization examples the specification discloses.

For example, in discussing “Client Authorization Methods” for “determin[ing] whether a client has appropriate authorization to access an environment or application,” the specification teaches at 11:39-47 that, “[i]n some embodiments, authorization relate, at least partly, **to login information associated with the client attempting access**.” It thus discloses at 11:50-54 that “[t]he method 200 may begin by requesting login or client information 202 from the party requesting access to the video environment or application (the client)” and “[t]his information may be requested 202 from the client and/or from other systems or applications.”

To be sure, the patent also teaches at 13:25-34 that access may be determined based on various attributes, including “stored attributes associated with the client” and “inferred attributes based on extrinsic information.” But the specification states that the invention does not require the use of such attributes; rather, it explains at 12:1-10 that such “authorization attributes” are used “[a]dditionally, or alternatively” to the login method the specification discloses.

Because Defendants’ construction simply adds words to the claim language already present to try to narrow its scope—and does so in a manner that would exclude disclosed embodiments—the Court should reject Defendants’ construction.” *BMC Software*, 2015 WL 4776970, at *29; *Effective Expl.*, 2017 WL 3193322, at *15 (rejecting “Defendants’ construction” because it “simply uses the exact language of the claim,” but tries to “add[]” narrowing limitations to it).

16. “the server video data” [Claim 20]

As stated above, Defendants have withdrawn their indefiniteness argument as to this term and agree that it should be construed to have its plain and ordinary meaning. Ex. 10 at 2.

17. “configured to run, over the public network” / “configured to run the video editing module over the public network” [Claims 21, 22, 26, 27, 28]

As stated above, Defendants have withdrawn their indefiniteness argument as to this term and agree that it too should be construed to have its plain and ordinary meaning. Ex. 10 at 2.

18. “corresponding to a portion of video information of a video file” [Claim 21]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning.	“corresponding to a start time position and end time position of the video data of a video file”

Defendants’ construction of this term should be rejected for the same reason as Defendants’ similar construction of Term 12: Because it conflates “video information” with “cue point information” and attempts to limit the term to one of the many possible examples/embodiments of “cue point information” that the patent discloses. As explained at pages 11 and 17-18, there is no reason to limit the claims in that way—a reality proven by Defendants’ on-again/off-again admission that the term should be construed to have its plain and ordinary meaning. Ex. 10 at 4-5.

Indeed, as explained, the patent teaches at 14:57-59 that “video data may comprise and/or be associated with other data, including text descriptions, audio information, and cue point information.” And it also teaches at 7:9-14 that “video data may include visual data, audio data, still frames, stop-time successions of images, virtual reality information (e.g. in Virtual Reality Markup Language (VRML)), three-dimensional modeling data, textual data, or any other information for displaying video images.” In short, the patent teaches that a variety of data may comprise “video information” and a start and end time position is just one example.

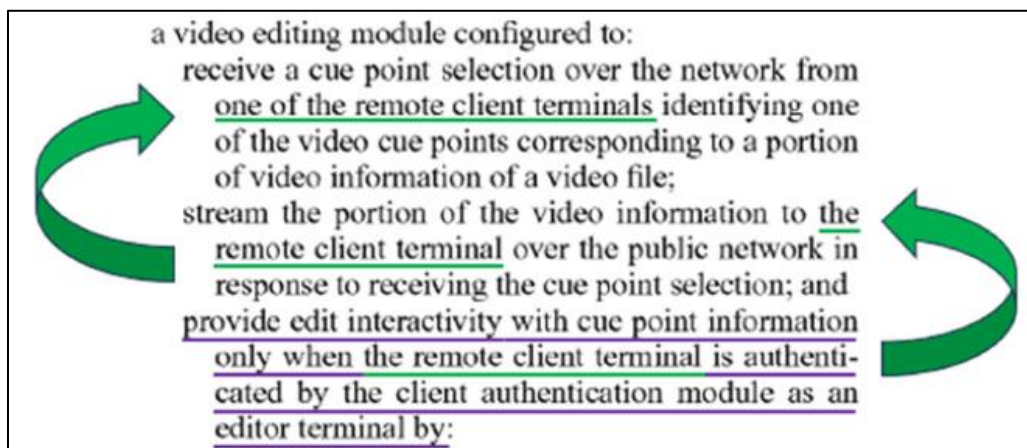
Because Defendants’ construction would limit the claims to one of the many disclosed embodiments, it is incorrect and should be rejected. *BMC Software*, 2015 WL 4776970, at *29.

19. “provide edit interactivity ... only when the remote client terminal is authenticated by the client authentication module as an editor terminal” [Claim 21]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning. <i>Alternatively</i> , “provide edit interactivity with cue point information only when the at least one of the remote client terminals is authenticated by the client authentication module as an editor terminal”	“the ability to enter a command to edit cue point information is only provided to the remote client terminal that is authenticated by the client authentication module as an editor terminal.” <i>Alternatively</i> , if the video editing module can provide edit interactivity to other devices such as servers or non-authenticated remote client terminals, this term is indefinite.

Defendants’ construction and their fallback indefiniteness argument fail for three reasons:

First, both fail because they would impose a requirement that all remote client terminals must be authenticated such that, “if the video editing module can provide edit interactivity to other devices such as servers or non-authenticated remote client terminals,” the claim would not be infringed and/or, per Defendants, is indefinite. But that requirement is inconsistent with the plain language of Claim 21, which recites both “an application server accessible by a plurality of remote client terminals” and “receiv[ing] a cue point selection over the network from one of the remote client terminals.” And as shown below by Dr. Schaefer annotations from ¶ 101 of his second declaration (Ex. 3), the “the remote client terminal” referred to in the claim term at issue (bottom green underlined term) refers back to the narrower “one of the remote client terminals.”



Indeed, Dr. Schaefer confirmed that a POSITA would understand that both Defendants’

construction and its fallback indefinite argument are wrong because the claim requires only that the recited video editing module be configured to “provide edit interactivity with cue point information only when the at least one of the remote client terminals is authenticated by the client authentication module as an editor terminal.” Ex. 3 ¶¶ 100-105, 110-127. In other words, the claim requires only that the module be configured to authenticate at least one of the plurality of remote client terminals that are capable of accessing the application server.

Further, and to be clear, as also explained above at pages 13-14, nothing precludes the remote client terminal from being a server. Rather, the patent specifically teaches at 24:32-40 that the remote client terminal may be “an automated computer system,” i.e., a server. Ex. 3 ¶ 122.

Second, Defendants’ construction also should be rejected because Defendants’ attempt to redefine the recited “provide edit interactivity with cue point information” language to require “the ability to enter a command to edit” is inconsistent with the claim language, which—as Dr. Schaefer explains in his second declaration (Ex. 3) at ¶¶ 91-95—already states what “provide edit interactivity” requires, reciting (as shown below) that it is accomplished “by” [1] “receiving a cue point editing command over the public network” and [2] “modifying a portion of the cue point information at the video editing module in response to and according to the cue point editing command.” *Accord*. As

provide edit interactivity with cue point information only when the remote client terminal is authenticated by the client authentication module as an editor terminal by:
[1] receiving a cue point editing command over the public network from one of the remote client terminals; and
[2] modifying a portion of the cue point information at the video editing module in response to and according to the cue point editing command received over the public network from the client terminal,

such, the Court should reject Defendants’ attempt to redefine the claim with incorrect or redundant language. *BMC Software*, 2015 WL 4776970, at *24 (rejecting construction as “redundant” where claim specified what actions and/or functionality was required).

Finally, Defendants’ construction also should be rejected because it would rewrite the claim such—rather than requiring that edit interactivity be provided “when the remote client terminal is authenticated” as claimed—it would require interactivity “be provided to the remote client terminal that is authenticated.” There is no reason to rewrite the claims in this manner.

Indeed, as Dr. Schaefer also explains, the specification teaches that “a terminal may be authenticated without any information being provided ‘to’ it, including explaining at 11:45-12:10 how, ‘[i]n some embodiments, authorization relate, at least partly, to login information associated with the client attempting access’ and how ‘[t]his information may be requested 202 from the client and/or from other systems or applications.” Ex. 3 ¶ 97; *id.* ¶ 98 (identifying other examples). Similarly, the patent discloses at 13:36-38 that, regardless of the authentication mechanism used, “[i]f the client does have permission 304-2 to access the VEE or the desired files, the method 300 [simply] may continue to load the VEE 310.” In short, it teaches that nothing may be provided “to” the authorized remote client terminal; rather, the system simply allows access “when” the at least one remote client terminal is authenticated. Ex. 3 ¶ 99.

For each of these reasons, both Defendants’ construction and their indefinites argument are incorrect and should be rejected. At most, the Court should construe the term as Plaintiff has proposed to clarify that “the remote client terminal” means “one of the remote client terminals.”

20. “a cue point” [Claim 21]

As stated above, Defendants have withdrawn their indefiniteness argument as to this term and agree that it too should be construed to have its plain and ordinary meaning. Ex. 10 at 2.

21. “without authentication of the remote client terminal by the client authentication module as an editor terminal” [Claim 22]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning. <i>Alternatively</i> , “without a need for authentication of the remote	The steps that follow are performed by the video playback module for the remote client terminal that has not been authenticated by the client authentication module as an

client terminal by the client authentication module as an editor terminal.”	editor terminal. Alternatively , if the video playback module can perform the steps that follow for authenticated remote client terminals, this term is indefinite.
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The Court should reject both Defendants’ construction and their fallback indefiniteness argument as inconsistent with the claims and specification. Indeed, Defendants’ construction would render Claims 22 and 23 inoperable—a result that, in and of itself, shows it is wrong. *Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.*, 904 F.3d 965, 972 (Fed. Cir. 2018) (citing *Ecolab, Inc. v. FMC Corp.*, 569 F.3d 1335, 1345 (Fed. Cir. 2009), for the principle that, “where claim language permits an operable construction, the inoperable construction is wrong”).

The fault in Defendants’ construction is clear by applying it. For example, Claim 22 recites “without authentication of **the remote client terminal** by the client authentication module as an editor terminal.” And as Dr. Schaefer’s below annotated version of Claims 21 and 22 shows, “[t]he remote client terminal” to which Claim 22 is referring is the Claim 21 “**remote client terminal ...**

authenticated by the client authentication module as an editor terminal.” Ex. 3 ¶

147. As such, if Claim 22 required a “remote

provide edit interactivity with cue point information only when the remote client terminal is authenticated by the client authentication module as an editor terminal by:

...

22. The system of claim 21, wherein the application server is configured further to run, over the public network: a video playback module configured, without authentication of the remote client terminal by the client authentication module as an editor terminal, to:



client terminal that has not been authenticated ... as an editor terminal” as Defendants’ construction would require, **Claim 22 could never be practiced**. Neither could Claim 23, which depends from Claim 22. **Both would be inoperable**. *Id.* ¶¶ 148-150.

As such, Defendants’ construction clearly “is wrong.” *Power Integrations*, 904 F.3d at 972. Indeed, it is particularly wrong given that Claim 23 recites the invention of Claim 22 wherein “the video playback module is further configured to provide access to edit interactivity via the video

editing module when the remote client terminal is authenticated by the client authentication module as an editor terminal.” In short, Claim 23 recites that Claim 22 can be met by providing access even though “the remote client terminal is authenticated ... as an editor terminal.”

Fortunately, contrary to what Defendants argue, there is no conflict among the claims, much less an inoperability issue. To the contrary, the patent teaches at 10:20-30 that “it may be desirable to allow free access to the VPE 118 so any client can watch video files, but limit access to the VEE 116 so only authorized clients may edit video files.” It likewise teaches at 11:40-47 and 13:18-19 that the need for access authority may differ among terminals as “it may be desirable in some cases to determine whether a client has appropriate authorization to access an environment or application,” including as “it may be desirable to open access to the VEE” for some terminals.

As Dr. Schaefer also explains, the implication of these teachings is clear—and more than enough to provide a POSITA reasonable certainty regarding the meaning of the claim. Ex. 3 ¶¶ 104-106, 154. Simply put, a POSITA would understand Claim 22 to convey that its recited functions be performed “regardless of” or “without a need for authentication of the remote client terminal by the client authentication module as an editor terminal”—a construction that effectuates the claim language without rendering the claims inoperable as Defendants propose. *Id.* ¶¶ 151-154. Moreover, it is entirely consistent with Claim 23, which specifies that additional editing functionality is provided “when the remote client terminal is authenticated.” *Id.*

22. “the video file” [Claims 22, 24]

As stated above, Defendants have withdrawn their indefiniteness argument as to this term and now agree that it too should be construed to have its plain and ordinary meaning. Ex. 10 at 2.

23. “wherein modifying a portion of the cue-point information affects the corresponding cue point by at least one of: creating the cue point, deleting the cue point, temporally moving the cue point, editing a label associated with the cue

point, or editing an association between multiple cue points including the cue point” [Claim 25]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning.	Indefinite.

Defendants’ argument that this term is indefinite basically boils down to their dislike for how the patentees defined the term “modifying a portion of the cue-point information.” As they state: “It is unclear how ‘modifying’ a portion of the cue-point information can include creating the cue point, as the cue-point information being ‘modified’ does not yet exist (i.e., it is unclear how one can modify a cue point that has not yet been created).” Ex. 8 at 58-59.

To be clear, there is nothing inconsistent with “modifying” including “creating.” As the *Microsoft Computer Dictionary* (Ex. 6) states at page 345, one can “modify structure” by “permit[ting] fields (columns) to **be added** or deleted.” Ex. 3 ¶ 170. Indeed, it is unclear how going from no cue point to having a cue point (i.e., “creating the cue point”) is not a “change” like Defendants argue “modifying” requires. *Id.* ¶¶ 169-178. In any event, the point is moot. As this Court has held, “if a special definition is provided to a claim term by the patentee, the inventor’s lexicography governs.” *Nanoco Techs.*, 2021 WL 1890453, at *7 (citation omitted). And here, Claim 25 recites that “modifying cue point information” encompasses “creating the cue point.”

Moreover, and also to be clear, Dr. Schaefer explains that the Claim 25 definition is not inconsistent with any portion of Claim 21. As he explained, “a POSITA would not understand anything in Claim 21 to require that a cue point exist” before the “modifying a portion of the cue point information” occurs, “wherein modifying a portion of the cue-point information affects the corresponding cue point by at least one of: **creating the cue point.**” Ex. 3 ¶ 175. In short, “modifying” can equal “creating.” Nor is there any conflict with the specification. Certainly, the portions Defendants cite are expressly limited to describing discrete “embodiments”—not the patent as a whole. Further, in that more limited context, the specification never states that

modifying cannot include creating. It merely lists them as one of several options. *See id.* ¶ 177.

In sum, Claim 25 is clear and—as Dr. Schaefer confirmed—not indefinite. *Id.* ¶¶ 169-178.

24. “standard Internet browser” [Claim 26]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning.	Indefinite.

The term at issue appears in Claim 26, which recites in part “to provide the edit interactivity according to data received over the public network via a standard Internet browser running on the remote client terminal.” Defendants argue the claim is indefinite because, per Defendants, “[i]t is unclear what is meant by a ‘standard’ internet browser, and what makes a browser a ‘standard’ browser rather than one that is not ‘standard.’” Ex. 8 at 59. Again, Defendants’ unsupported attorney argument is wrong—a reality confirmed by Dr. Schaefer. Ex. 3 ¶¶ 179-190.

As Dr. Schaefer explains, a POSITA would readily understand that a standard Internet browser is “one that complies with a standard governing web browsers and thus could be used to perform browser related functions.” *Id.* ¶ 189. For example, the *Microsoft Computer Dictionary* (Ex. 6) defines “standard” at page 495 to mean “[a] de jure technical guideline advocated by a recognized noncommercial or government organization that is used to establish uniformity in an area of hardware or software development.” Ex. 3 ¶ 184. It also identifies “the World Wide Web Consortium” (“W3C”) at page 560 as one example of “a standards body” that has promulgated “open Web standards, such as the HTML and XML document markup languages.” *Id.* ¶ 186.

Dr. Schaefer thus explained that a “POSITA would understand Claim 26 to be narrowing Claim 21 such that embodiments that use **specialized or non-standard browsers** would not infringe.” *Id.* ¶ 190. Rather, only those embodiments configured to work with a standard compliant web browser would infringe. *Id.* And he even identified examples of such standard Internet browsers—explaining that “Google’s Chrome, Mozilla’s Firefox, Microsoft’s Edge, and Apple’s

Safari browsers all are World Wide Web Consortium compliant browsers.” *Id.* ¶ 189.

In sum, the meaning of the term is clear and—as Dr. Schaefer confirmed—would be understood “with more than the reasonable certainty required.” *Id.* ¶¶ 180, 190. As such, the Court should reject Defendants’ argument and construe the term to have its plain and ordinary meaning.

25. “provide the edit interactivity without a dedicated client-side application running on the remote client terminal” [Claim 27]

WellcomeMat’s Construction	Aylo’s Construction
Plain and ordinary meaning. <i>Alternatively</i> , “provide the edit interactivity other than through an application running on the client’s terminal reserved for providing such edit interactivity.”	Indefinite.

Defendants argue this term is indefinite because “[i]t is unclear what is meant by a ‘dedicated’ application”; they also claim to be uncertain as to “whether a web browser interface to a web-based application constitutes a ‘client-side’ application Ex. 8 at 59. Again, Defendants cite nothing in support—relying solely on the entirely unsupported arguments of their attorneys. There is a good reason. As Dr. Schaefer confirmed, Defendants are wrong. Ex. 3 ¶¶ 191-199.

In particular, the term at issue appears in Claim 27, which recites “[t]he system of claim 21, wherein the application server is configured to run the video editing module over the public network, so as to provide the edit interactivity **without a dedicated client-side application running on the remote client terminal.**” And as Dr. Schaefer explains, the specification expressly addresses this embodiment, including by teaching at 13:61-67 that the video editing environment/module “GUI may be generated 316 as a webpage on a client’s web browser, as a frame within a webpage, **as a dedicated client-level application on the client’s terminal (with the VEE itself running either at the client- or server level)**, or as a background script to be executed by another application (e.g. as Visual Basic commands for an interpreter which may use those commands to generate the GUI).” Ex. 3 ¶ 198. Given this disclosure, he explained that “a POSITA thus would understand that a ‘dedicated client-side application running on the remote

client terminal’ would not include a webpage on a client’s web browser, a frame within a webpage, or a background script to be executed by another application.” *Id.* ¶ 199.

And Dr. Schaefer did not stop there. He further explained—citing various extrinsic resources—that the meaning of “dedicated” would have been well known to a POSITA. *Id.* For example, he explained that “the *Dictionary of Computing* [(Ex. 9)] defines ‘dedicated’ at page 97 as ‘referring to a program, procedure or system that is reserved for a particular use.’” Ex. 3 ¶ 194. He also explained that, “[s]imilarly, the *Microsoft Computer Dictionary* [(Ex. 6)] defines ‘dedicated’ at page 150 as “[o]f, pertaining to, or being a device, program, or procedure devoted to a single task or function.” *Id.* ¶ 195. Dr. Schaefer confirmed he agreed with these definitions.

Accordingly, given the disclosure in the specification and the general POSITA understanding in the art at the time of the invention, Dr. Schaefer explained that he understood—and believed any POSITA would understand—with at least the reasonable certainty required that this term means “provide the edit interactivity **other than through an application running on the remote client terminal reserved for providing such edit interactivity.**” Ex. 3 ¶ 199. In other words, the edit interactivity must be provided through a **non**-dedicated client application like “a webpage on a client’s web browser, as a frame within a webpage, ... or as a background script to be executed by another application” like the patent discloses at 13:61-67. Ex. 3 ¶¶ 198-199.

26. “the server-side video information” [Claim 28]

As stated above, Defendants have withdrawn their indefiniteness argument as to this term and now agree that it too should be construed to have its plain and ordinary meaning. Ex. 10 at 2.

Dated: March 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and served via email on all counsel of record on this 14th day of March, 2025.

/s/ Andres Healy
Andres C. Healy