

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

MULTIMEDIA TECHNOLOGIES PTE.
LTD.,

Plaintiff,

v.

VIZIO, INC.,

Defendant.

Civil Action No. 2:23-CV-00124-JRG

DEFENDANT VIZIO, INC.'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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Exhibit	Description
A.	Email from MMT's counsel dated July 15, 2024.
B.	Appendix I to MMT's Amended Infringement Contentions served March 20, 2024.
C.	File history excerpts for U.S. Patent No. 9,077,928.
D.	United States Patent No. 7,266,726 ("Ladd").
E.	Excerpts from McGraw-Hill Dictionary of Scientific and Technical Terms (6th ed. 2003).
F.	Excerpts from Random House Webster's Unabridged Dictionary (2001).
G.	Excerpts from Webster's Universal Computer Dictionary (2007).
H.	Excerpts from Microsoft Computer Dictionary (5th ed. 2002).
I.	Appendix G to MMT's Amended Infringement Contentions served March 20, 2024.
J.	File history excerpts for U.S. Patent No. 9,215,393.
K.	New Oxford American Dictionary (3 rd ed. 2010).
L.	Appendix H to MMT's Amended Infringement Contentions served March 20, 2024.
M.	Email from VIZIO's counsel dated April 26, 2024.

¹ Numbered exhibits refer to those submitted with MMT's Opening Claim Construction Brief ("Op. Br.") (Dkt. 91). Lettered exhibits are attached to the supporting declaration of Steven W. Hartsell submitted concurrently herewith.

Defendant VIZIO, Inc. (“VIZIO”) hereby submits its Responsive Claim Construction Brief for United States Patent Nos. 9,055,255 (“the ’255 Patent”); 9,077,928 (“the ’928 Patent”); 9,215,393 (“the ’393 Patent”); and 9,426,527 (“the ’527 Patent”).²

I. INTRODUCTION

MMT argues that every single term across four patents does not require construction and should be given its “plain and ordinary meaning.” However, MMT generally does not state what that plain and ordinary meaning should be. In doing so, MMT seeks to avoid committing itself to concrete positions, effectively reserving the right to push the boundaries of the terms’ meanings as MMT sees fit, unconstrained by the intrinsic record. Moving forward with essentially no claim constructions would put the jury in the position of having to decide between conflicting interpretations of disputed terms proffered by the parties’ experts. That issue, however, is a legal one for the Court to decide during *Markman* – not the jury at trial. This Court should adopt clear meanings for the disputed terms to provide the necessary clarity for the fact issues presented at trial.

II. LEGAL STANDARD

VIZIO recognizes this Court’s familiarity with the principles of claim construction.

III. U.S. PATENT NO. 9,077,928

The specification’s substantive disclosure concerning the claimed collection and reporting of usage data is found in three columns in the specification. (*See* Ex. 3, 27:1-30:20.)

² There are no proposed terms for construction concerning United States Patent Nos. 9,247,174; 9,510,040; 9,185,325; 9,578,384; and 10,419,805. Further, VIZIO is aware of this Court’s claim construction ruling in *Multimedia Technologies Pte. Ltd. v. LG Electronics Inc. et al.*, No. 2:22-cv-494, Dkt. 93 (E.D. Tex. June 30, 2024) (“*LG Order*” in “*MMT v. LG matter*”). Finally, MMT is no longer pursuing infringement for U.S. Patent No. 9,232,168. (*See* Ex. A.)

A. “a report” / “the report” (Claims 1, 8-9, 16)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“an electronic record/document containing data/information organized together as opposed to raw data”

Although the term “report” is central to the asserted claims, appearing numerous times in the specification and claims, the scope of “report” is disputed. Courts must resolve “fundamental dispute[s] regarding the scope of a claim term.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362–63 (Fed. Cir. 2008). Here, VIZIO disputes MMT’s theories in its Amended Infringement Contentions (“AICs”) that identify multiple, disparate items as allegedly satisfying the claimed “report.” While courts cannot “bias[] the claim construction process to exclude or include specific features of the accused product or process,” this “does not forbid awareness of the accused product or process to supply the parameters and scope of the infringement analysis, including its claim construction component.” *Wilson Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F.3d 1322, 1331 (Fed. Cir. 2006). VIZIO contends that the accused products do not create, store, or transmit the claimed “reports”; VIZIO’s proposed construction seeks to articulate the meaning of “report” based on the specification. On the other hand, MMT’s AICs grossly expand the definition of “report” to include items beyond any reasonable definition, including generic data packets. (*See, e.g.*, Ex. B, pp. 19-21 (identifying “data structures and payloads”), p. 8 (“Data Packetization” and “concatenated packets”) compared with p. 10 (identifying a “static file” and p. 12-14 (identifying an “opt-in” status).) The Court must resolve this fundamental dispute regarding the scope of “report.”

The ’928 specification describes three different methods for “reporting activities.” Only one of these methods, the third method disclosed, includes a “report”:

Reporting activities to receiver 1418 may be accomplished in a number of

methodologies. [1] In one embodiment, raw data is transmitted. The raw data may be a verbose description of the activity. [2] In another embodiment, activity indicia of the activity is transmitted. The indicia may be a code or other representation of an activity or modified raw data, such as by eliminating certain data fields. [3] In yet another embodiment, a **report** is created from the raw data and/or the indicia for transmission. (Ex. 3, 27:19-27 (numerals and emphasis added)³.)

According to the specification, a “report” must be “created from the raw data and/or the indicia for transmission” – raw data alone does not constitute a report. (*Id.*) Although the specification discloses several ways of the act of “reporting” information to a recipient, the asserted claims cover only the embodiment expressly requiring a “report.” (*See also* Ex. 3, 27:28-30 (“The content of a report may depend on the type of report to be generated. In one embodiment, a first report is generated upon first power-up of Intelligent TV 100.”), 28:33-34 (“Report generator 1412 formats a report from the raw activity records and/or indicia of activity records.”).)

While the specification provides no further guidance, VIZIO’s proposed construction is consistent with the prosecution history. The Examiner cited prior art indicating the general understanding that a “report” is a human-readable document. Specifically, the Examiner issued several office actions rejecting the application over Ladd (U.S. Pat. No. 7,266,726), which teaches the use of “human-readable error logs.” (Ex. C, 026334-37, 026909, 26912-17; Ex. D, 19:58-20:17.) In response to an Applicant argument that Ladd allegedly discloses only error reporting, the Examiner specifically pointed to Ladd’s error logs as including a variety of information beyond mere error reporting, citing the portion of Ladd teaching “human-readable error logs or records within the storage device 306” and other “human-readable data.” (Ex. C, 026909, 026934; Ex. D, 19:67-20:17.) The Examiner’s understanding of Ladd is informative and consistent with VIZIO’s proposed construction. *RF Cyber Corp. v. Google LLC*, No. 2:20-CV-274-JRG, 2021 WL

³ All emphasis added by VIZIO unless noted otherwise.

5357465, at *10 (E.D. Tex. Nov. 17, 2021) (an examiner’s understanding of a term “can be given some weight.”). Nowhere during prosecution was “report” given a broader or different meaning, and there is no indication the Applicants intended a special meaning for “report.”

Finally, contemporaneous technical dictionaries affirm VIZIO’s proposed construction that a “report” is a record or document presenting data organized for human consumption, which aligns with the specification’s disclosure and the prosecution history. (*See* Ex. E, p. 1788 (“[COMPUT SCI] An output document prepared by a data processing system.”); Ex. F, p. 1634 (“7. *Computers*. output, esp. printed containing organized information.”); Ex. G, p. 240 (“A presentation of information in print...It will be formatted in such a way as to make it attractive and easy to read.”); Ex. H, p. 450 (“The presentation of information about a given topic, typically in printed form...”)). These definitions align with VIZIO’s proposed construction, adhering to the term’s ordinary meaning, which should be adopted. *See Inverness Med. Switzerland GmbH v. Princeton Biomeditech Corp.*, 309 F.3d 1365, 1369 (Fed. Cir. 2002) (“It is well settled that dictionaries provide evidence of a claim term’s ‘ordinary meaning.’”).

MMT asserts that “report” should be given its plain and ordinary meaning but declines to articulate any such meanings. This is problematic because MMT appears to argue that “reports” are not records or documents. (Op. Br., 16.) What is a report then? What does MMT intend to argue that a report is to the jury? How does the jury reach a decision on infringement or invalidity if VIZIO argues that a report is not raw data, but MMT argues that raw data suffices? The jury would first have to decide on the construction of “report.” But claim construction is the court’s role, not the jury’s.

As shown above, VIZIO’s construction is precisely how dictionaries define a report, and how the examiner understood the term during prosecution. MMT’s assertion that a report need not

include “organized information” contradicts these definitions and the examiner’s understanding. MMT cites no evidence that the Applicants meant a broader definition that might include raw data, nor can it because of the distinctions drawn in the specification. VIZIO’s construction articulates the plain and ordinary meaning of “report,” while MMT’s does not.

B. “report generator” (Claims 9, 16)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“an application/program that converts raw data into a [report]”

Because “report generator” is a term of art that lay jurors are unlikely to know, a specific construction is needed to aid the jury in understanding the claims, and evaluating infringement and validity. *Trinity Indus., Inc. v. Rd. Sys., Inc.*, 121 F. Supp. 2d 1028, 1033 (E.D. Tex. 2000) (“The purpose of claim construction is to interpret or elaborate upon the normally terse claim language in order to explain and understand, but not to change, the scope of the claims.”).

The specification explains the “[r]eport generator 1412 formats a report from the raw activity records and/or indicia of activity records. Report generator 1412 may access other components of Intelligent TV 100, such as system clock 1216.” (Ex. 3, 28:33-36.) Likewise, the “report generator” can be “signaled” “to generate a report.” (Ex. 3, 28:37-39.) This description defines the function of the report generator, emphasizing its role in formatting/converting raw data into an organized fashion in a report. The specification consistently uses the term “report generator” in the context of formatting/generating reports from raw activity data, highlighting the report generator’s conversion of raw data into a structured, organized report. (Ex. 3, 28:37-39.)

While the specification explains what a “report generator” *does*, it does not explain what it *is*. Fortunately, contemporaneous technical dictionaries clarify that a “report generator” is fundamentally an application or program. For instance, the *Microsoft Press Computer Dictionary*

defines “report generator” as “an application...” (Ex. H, p. 450; *see also* Ex. E, p. 1788 (defining “report generator” as “a routine...”)).)

MMT argues that a report generator “need not be an application/program” (Op. Br., 22.), but does not provide a proposed construction or any other indication of the term’s scope that would not be encompassed by an application/program. Indeed, the specification also does not disclose that a “report generator” is anything broader or different than an application/program.

Next, MMT argues that a “report generator” need not convert “raw data” into a report (*id.*), but, as shown above, that is exactly what the specification teaches. While MMT argues the specification discloses an embodiment whereby “*raw data is transmitted*” (*id.*), the specification does not disclose a single instance where the “report generator” transmits raw data. Further, as discussed in Section III(A), the claims are directed to a specific embodiment in the ’928 Patent involving reports, not raw data.

Finally, MMT argues “there is no disclosure that raw data must be ‘converted’,” and that the specification only uses “converted” “in the context of A/D conversion” (Op. Br., 22.) MMT ignores Col. 28:33-34, cited above, teaching “[r]eport generator 1412 **formats** a report from the raw activity records and/or indicia of activity records.” This is not a conversion.

VIZIO’s proposed construction should be adopted because it is consistent with the specification, aligns with contemporaneous technical dictionary definitions, and will aid the jury.

C. “report number” (Claims 1, 9, 16)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“a unique identifier assigned to a [report] that can be incremented, as opposed to a date and/or time”

The parties’ respective infringement positions indicate substantial disagreement on the scope and meaning of the term “report number.” *O2 Micro*, 521 F.3d at 1362–63. Specifically,

VIZIO disagrees with the assertion in MMT's AICs that a time stamp may constitute the claimed "report number." (Ex. B, 27-28.) *Wilson Sporting Goods*, 442 F.3d at 1331. Specifically, the specification differentiates between time stamps and report numbers:

In one embodiment, subsequent reports include a **time and date** field set by the current system date and a **sequential number**. A benefit of implementing a sequential number may be realized in situations wherein Intelligent TV 100 is unable to set system clock 1216 and system clock 1216 is a default value, a default value plus the increment of time passed since last power-up, or other value whereby the value retrieved from system clock 1216 is known to indicate that system clock 1216 has not been set. In situations where system clock 1216 is never, or at least not for a significant period of time, generating a report with a sequential report number on a known periodic basis can provide an estimate as to when the report was generated. For example, if reports are known to be generated daily and report #20 is sent on February first and reports #21 and #22 are both sent on February third, it may be assumed that report #21 was generated on February second and processed accordingly. (Ex. 3, 27:36-52.)

Because the specification clearly explains that a report can include both (1) time and date information and (2) a sequential report number, the two cannot be the same.

Further, the specification describes the report number as a unique identifier that can be incremented (e.g., from #21 to #22) to distinguish one particular report from a prior or subsequent report:

If step 1514 determines that this will be the first report for Intelligent TV 100, the report number is set in 30 step 1516 to a known value to indicate this is a first report, such as "1" If step 1514 determines this is not a first report, processing continues to step 1518 whereby **the report number is incremented**.

(Ex. 3, 29:29-35, Fig. 15.) A "report number" is an incrementable identifier, not a time stamp.

During prosecution, the Applicants added the relevant "report number" limitations to overcome rejections from prior art that disclosed error logs *with dates*. (Ex. C, 026372, 026909.) This prior art reference, Ladd, described that "the human-readable data may include the date/time of the event..." (Ex. D, 20:4-5.) MMT should not be permitted to sidestep this disclaimer of time stamps constituting a "report number."

Finally, MMT argues that VIZIO attempts to read in a “sequential” limitation (Op. Br., 23), but “sequential” does not appear in VIZIO’s proposed construction.

D. “report number information” (Claims 9, 16)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“content within a [report] that pertains specifically to the [report number] and different from the [report number] itself”

MMT’s AICs fail to explain how the accused products allegedly satisfy “report number information.” Specifically, the disputed term appears in claims 9 and 16, but the AICs refer to claim 1, which does not contain the disputed term. (Ex. B, 33, 36.) *Wilson Sporting Goods*, 442 F.3d at 1331. As the expert report deadline is quickly approaching, it is crucial that the Court provide guidance to clarify the scope of this term. *O2 Micro*, 521 F.3d at 1362–63.

The term “report number information” does not appear in the specification. However, its meaning can be logically deduced from the general rules and structure of English—*i.e.* “report number information” must be information pertaining to a “report number,” yet distinct from the “report number” itself. VIZIO’s interpretation avoids redundancy. *Merck & Co. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”).

The asserted claims recite that “report number information” is contained within a report. For example, Claim 9 states, “the usage report including report number information.” (Ex. 3, 33:47.) Similarly, Claim 16 requires “the report including report number information determined by assessing whether the report is a first report associated with a first power-up of the television or a subsequent report associated with customized information, the report number information being usable to estimate when the report was generated.” (Ex. 3, 34:28-33.) These claims indicate that report number information (1) can be included in a usage report, (2) is determined by assessing

if a report is a first report or a subsequent report, and (3) can be “usable to estimate” when a report was generated.

MMT argues that “‘report number’ is not a separate limitation in either claim 9 or claim 16” and that “[t]here is no reason that the report number ‘information’ cannot, for example, comprise the ‘report number’ itself.” (Op. Br., 24.) First, by adding “information” to “report number” in claims 9 and 16, the patentees created a separate limitation from the “report number” claimed in claim 1. MMT’s argument violates the doctrine of claim differentiation, and also renders the term “information” superfluous. *Power Mosfet Techs., L.L.C. v. Siemens AG*, 378 F.3d 1396, 1410 (Fed. Cir. 2004) (explaining that a claim construction that renders claim terms superfluous is generally disfavored). VIZIO’s construction, which gives meaning to all the terms in the claims, should be adopted. *Merck*, 395 F.3d at 1372 (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”).

E. “first report information” (Claims 1, 9)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“data/information included only in a [report] that is generated in connection with the first ever power-up of the television”

Like “report number information,” the term “first report information” appears only in the claims and not in the specification. Claims 1 and 9 require: “wherein the first report is formatted to include first report information, and subsequent reports include customized information.” (Ex. 3, 33:3-5, 33:52-34-2.) The specification offers the following guidance:

In one embodiment, a first report is generated upon first power-up of Intelligent TV 100. To avoid generating subsequent first reports, an indicator in persistent memory is set, the presence of a previously created first report is determined, or other method whereby Intelligent TV 100 may determine if the current power-up is the first power-up. The content of subsequent reports, that is reports that are not the first report, may be customized. (Ex. 3, 27:29-36.)

Thus, a TV generates a “first report” in connection with the initial power-up. The TV sets “an indicator in persistent memory” to avoid generating “subsequent first reports,” further clarifying that reports not associated with the initial power-up are not “first reports.” The claims reinforce this distinction, reciting that subsequent reports (those following a “first report”) include customizable information. (*See also* Ex. 3, 27:35-36 (“The content of subsequent reports, that is reports that are not the first report, may be customized.”).) This distinction between the “first report” and “subsequent reports” as recited in the claims and disclosed in the specification, ensures that the first report, and only the first report, contains specific information related to the TV’s initial power-up. VIZIO’s proposed construction properly distinguishes “first report information” from information in “subsequent reports,” which is necessary to give full effect to the claim language. *Merck*, 395 F.3d at 1372.

MMT does not appear to dispute that “first report information” is information associated with a “first power-up of the television.” Instead, MMT suggests that “first report information” can be included in reports other than the report generated upon the TV’s initial powerup, and contends that VIZIO seeks to read in a negative limitation. (Op. Br., 24-25.) MMT’s suggestion directly contradicts the explicit claim language: “wherein the first report is formatted to include first report information, and subsequent reports include customized information.” (Ex. 3, 33:3-5, 33:52-34-2.) The claim language links “first report information” only with a “first report.” Similarly, subsequent reports follow the first report and contain “customized information.” This is consistent with the specification’s teaching that generation of subsequent “first reports” after the initial power-up are avoided by setting an indicator in memory. (Ex. 3, 27:29-36.) VIZIO’s proposed construction reflects the clear distinction articulated in the specification and the claims.

F. “determining whether a report is a first report associated with a first power-up of the television” / “determined by assessing whether the report is a first report

or a subsequent report, the first report being associated with a first power-up of the television” / “determined by assessing whether the report is a first report associated with a first power-up of the television or a subsequent report associated with customized information” (Claims 1, 9, 16)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“determining whether a report is generated in connection with the first ever power-up of the television or whether the [report] is generated after the first ever power-up of the television”

The only reference in the specification to a “first power-up” explains:

In one embodiment, a first report is generated upon first power-up of Intelligent TV 100. To avoid generating subsequent first reports, an indicator in persistent memory is set, the presence of a previously created first report is determined, or other method whereby Intelligent TV 100 may determine if the current power-up is the first power-up. (Ex. 3. 27:29-34.)

Thus, a first report is associated with the first-ever power-up of a TV, which is confirmed by the description of setting “an indicator in persistent memory” to avoid generating more than one first report. The disputed terms require an affirmative action to determine if a first report associated with the first-ever power-up of a television has occurred. VIZIO’s construction is consistent with the specification’s disclosure.

MMT does not substantively contest VIZIO’s construction or understanding of the disputed phrases, instead referring back to MMT’s arguments regarding “first report information.” (Op. Br., 26.) Because the parties dispute whether the claimed determination is for something other than the *first ever* power-up of a TV (for example, the first power-up on a given day or in a given month), a construction is necessary to clarify claim scope and guide the remainder of litigation and trial. *Loral Fairchild Corp. v. Victor Co. of Japan*, 931 F. Supp. 1044, 1048 (E.D.N.Y. 1996) (“guidance on the proper scope of the claims will clarify the parties’ rights and obligations under the patents and may lead to a substantial savings of time and expense.”).

G. “determining a report number for the report, the report number usable to estimate when the report was generated” / “the report number information usable to estimate when the report was generated” / “the report number information being usable to estimate when the report was generated” (Claims 1, 9, 16)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Not indefinite. Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	Indefinite.

The disputed phrases requiring a “report number” that can be used to estimate when a report is generated were added by amendment during prosecution after the Examiner issued multiple office actions rejecting the application over the prior art. (Ex. C, 026907-18, 026929-32; Ex. D.)

The specification describes how the claimed estimation process works: “if reports are known to be generated daily and report #20 is sent on February first and reports #21 and #22 are both sent on February third, it may be assumed that report #21 was generated on February second and processed accordingly.” (Ex. 3, 27:49-52.) The described process requires additional, independent knowledge of the reporting process, making infringement determinations context-dependent and rendering the asserted claims indefinite.

Assume, for example, an accounting report with a report number of “5.” If it is known that the accounting report in question is generated daily starting on January 1, 2022, then a report number of “5” might signify that the accounting report was generated on January 5, 2022. However, absent knowledge about *when* such accounting reports are generated, the report number is not “usable to estimate” when the report was generated. Thus, in this example, an infringement determination would vary based on each reader’s independent knowledge of the accounting report generation process. Similarly, if the same accounting report were generated *ad hoc*, a report number of “5” would offer no indication of when the accounting report was generated. Once again,

any meaning ascribed to that report number is dictated by the specific reader's underlying knowledge or assumptions regarding the report generation process, if any.

The Federal Circuit has explained that when a determination of “whether a certain user is infringing the asserted claims is context-dependent...a context-dependent infringement determination is likely indefinite.” *Versata Software, Inc. v. Zoho Corp.*, 213 F. Supp. 3d 829, 838 (W.D. Tex. 2016) (citing *Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1251 (Fed. Cir. 2008) (“When a proposed construction requires that an artisan make a separate infringement determination for every set of circumstances in which the [accused product] may be used, and when such determinations are likely to result in differing outcomes (sometimes infringing and sometimes not), that construction is likely to be indefinite.”)).

For example, the Federal Circuit found a claim requiring a “pharmaceutical composition ... which comprises a synergistically effective amount of clavulanic acid” to be invalid as indefinite. *Geneva Pharms., Inc. v. GlaxoSmithKline PLC*, 349 F.3d 1373, 1375-76 (Fed. Cir. 2003). The Federal Circuit reasoned that the claim could infringe or not infringe based on circumstances outside the patent and unknowable with any certainty by a POSA. *Id.* at 1384. More specifically, whether a composition was “synergistically effective” depended on the bacteria to which a POSA applied the composition. *Id.* The claim was found indefinite because the same composition could be effective against some bacteria but not others. *Id.*

Here, any determination of whether an accused “report number” or “report number information” is usable to estimate when a report was generated would be context-dependent and vary with a reader's background knowledge of the applicable report generation process, if any. As such, the asserted claims are indefinite under Federal Circuit precedent. *See id.*

H. “customized information” (Claims 1, 9, 16)

MMT's Proposed Construction	VIZIO's Proposed Construction
Not indefinite. Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	Indefinite.

“Customized information” is also indefinite. The specification provides no guidance to the meaning of the word “customized,” as the term is mentioned a single time: “The content of subsequent reports, that is reports that are not the first report, *may be customized*.” (Ex. 3, 27:35-36.) The claims merely mimic the language in the specification with no other context to provide meaning. (Ex. 3, cls. 1, 9, 16.)

During prosecution, the claims were amended after an Office Action rejection to add the clauses containing “customized information.” (Ex. C, 026929-32.) However, the Applicants’ remarks seeking to traverse the rejection contain no explanation or discussion of the meaning of “customized information.” (Ex. C, 026933-36.)

In *Alarm.com Inc. v. ipDataTel, LLC*, No. CV H-18-2108, 2018 WL 5113054 (S.D. Tex. Oct. 19, 2018), the court found the phrase “custom-built for the mobile device” indefinite:

The term “custom-built” for unspecified and unknowable—indeed, not yet existing—devices, requiring unspecified and unknowable customized features, is both broad and without definition. The failure to define or describe “custom-built...clients” or the vast range of possible components expands the meaning of “custom-built” to indefiniteness. Because the specification does not clarify its meaning,” but instead sets out an undefined and undefinable range of future “clients,” “integrations,” or “components,” the term is indefinite.

Id. at *16.

Here, like in *Alarm.com*, the Applicants failed to define or describe “customized information.” There is nothing to apprise a POSA about the scope of this term. Must the information be “customized” for a given TV? A given user? Is “Account No. 12345” on a report “customized information” because the account number presumably belongs to a specific user? Or is “Account No. 12345” not “customized information” because that information is found on every

report for the specific user? The '928 Patent's complete lack of guidance renders the claim indefinite.

Furthermore, the term “customized information” is indefinite because, as discussed in Section III(G), when “whether a certain user is infringing the asserted claims is context-dependent,” such claims are “likely indefinite.” *Versata*, 213 F. Supp. 3d at 838. Suppose a POSA is analyzing a report for infringement. Outside knowledge might be needed to determine if any information in the report in question qualifies as “customized information.” Likewise, outside knowledge might alter whether or something in a given report is considered “customized information.” Because infringement could turn on context or outside knowledge, “customized information” is indefinite.

I. “activity monitor” (Claims 9, 16, 19)

MMT's Proposed Construction	VIZIO's Proposed Construction
Not subject to pre-AIA § 112 ¶6/post-AIA § 112(f). Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary. To the extent pre-AIA § 112 ¶6/post-AIA § 112(f) applies, not indefinite. Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary. Structure and function are disclosed in the specification.	Indefinite. This term is subject to pre-AIA § 112 ¶6/post-AIA § 112(f). Function: “identify usage activity of a television, the usage activity represented by one or more of activity data, application data, application manager data, system time/date information and usage activity data associated with another component of a television, and store information associated with the usage activity in the storage device.” Structure: None.

1. “Activity monitor” is a means-plus-function term under § 112 ¶6

MMT's proposal to give the term “activity monitor” its “plain and ordinary meaning”—with nothing more—is nonsensical. The term “activity monitor” has no plain and ordinary meaning and imparts no specific structure, falling clearly within the Federal Circuit's discussion of nonce words in *Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015). Accordingly, “activity

monitor” is indefinite.

In *Williamson*, the Federal Circuit analyzed the term “distributed learning control module,” explaining that “[m]odule’ is a well-known nonce word that can operate as a substitute for ‘means’ in the context of § 112, para. 6.” *Id.* at 1348–54. The Court further explained that “‘module’ is simply a generic description for software or hardware that performs a specified function.” *Id.* Similarly, here, the prefix “activity” does not connote any specific structure to “monitor” or the recited functions. The term “activity monitor” refers to a generic black box for performing the claimed functions. Neither the claims nor the specification provide specific structural details concerning the “activity monitor,” such as how the monitor is implemented. Rather, the claims recite a circular explanation that the “activity monitor is operable to [identify/monitor] usage activity of [a/the] television.” (Ex. 3, 33:38-39, 34:20-21; *see also id.* at cl. 19 (identifying additional functions).) Likewise, the only appearance of the term in the specification does not explain what an activity monitor *is*, only what it does. (Ex. 3, 2:9-16.)

Thus, like the prefix “distributed learning control” in *Williamson*, “activity” does “not describe how the ‘... module’ interacts with other components ... in a way that might inform the structural character of the limitation-in-question or otherwise impart structure.” 792 F.3d at 1351. And “activity” does not impart structure into the term “monitor” beyond mere function. Accordingly, the term is a means-plus-function term. *See Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, No. 2:14-CV-0911-JRG-RSP, 2015 WL 6746910, at *9 (E.D. Tex. Nov. 4, 2015) (treating nonce words as means-plus-function terms).

2. “Activity monitor” is indefinite due to lack of structure

Because no corresponding structure is disclosed for the claimed functions, “activity monitor” is indefinite. Once it is determined that § 112, ¶ 6 applies, the Court must determine the function of the limitation and then determine the corresponding structure disclosed in the

specification, if any. *Medtronic, Inc. v. Advanced Cardiovascular Sys., Inc.*, 248 F.3d 1303, 1311 (Fed. Cir. 2001). A “structure disclosed in the specification is ‘corresponding’ structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim.” *Id.* The focus of the “corresponding structure” inquiry is not merely whether a structure is capable of performing the recited function but whether the corresponding structure is “clearly linked or associated with the [recited] function.” *Id.*

MMT cites “application monitor 1408 and/or the algorithm disclosed in the flowchart of Fig. 15 and the corresponding description at 28:55-29:26,” as allegedly disclosing the requisite structure. (Op. Br., 29.) All of MMT’s arguments fail. First, “application monitor” is an entirely different term from “activity monitor,” and MMT provides no basis for treating them as interchangeable. The specification also attributes a different function to the application monitor, i.e., “generat[ing] activity records by querying each of applications 1404” (Ex. 3, 28:11-12), than to the “activity monitor.” And MMT’s citations to Figure 15 and the corresponding description do not reference either activity monitors or application monitors. Instead, Figure 15 depicts one embodiment of a process for generating reports, not identifying usage activity. (*Id.*, 9:66-67, Fig. 15.) There is no link between Figure 15 and the claimed function of the “activity monitor.” Further, while the specification discusses generating reports generically, it does *not* explain how usage activity is identified. (*See id.*, 28:55-29:26.) At most, the specification merely states a desired result: “Step 1506 obtains activity data.” (*Id.*, 29:6.) The Federal Circuit has held there is no structure where a flowchart and corresponding text only describe the results to be obtained without explaining how to achieve those results. *In re Amoya*, 656 F.3d 1293, 1298 (Fed. Cir. 2011). That is the case here.

Because the specification does not disclose any structure corresponding to the claimed

function, let alone link any structure to the recited functions, MMT “failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112,” which renders the claim indefinite. *In re Donaldson Co.*, 16 F.3d 1189, 1195 (Fed. Cir. 1994).

IV. U.S. PATENT NO. 9,215,393

Much like the '928 Patent, the substantive portion of the specification concerning the claimed invention is found in the last few columns. (*See* Ex. 4, 27:1-29:4.)

A. “a report” / “the report” (Claims 1-2, 6, 10-12)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“an electronic record/document containing data/information organized together as opposed to raw data”

VIZIO contends that the construction of “report” should be the same for both the '928 and '393 Patents, and VIZIO incorporates its arguments above by reference. *See* Section III(A). As with the '928 Patent, because MMT’s AICs identify a variety of disparate items as allegedly satisfying the claimed “report,” there is a fundamental dispute regarding the scope of this term that should be resolved at the claim construction phase. (*See*, for example, Ex. I, p. 11 (identifying static files), 12 (identifying ACR Health Metrics and an “opt-in” status).) *Wilson Sporting Goods*, 442 F.3d at 1331.

The specification ascribes no special or lexicographic meaning to the term “report” and provides no examples of a “report.” Rather, the specification describes the process of generating and sending reports generically. (Ex. 4, 28:1-57.) The claims offer little more, identifying specific information that might be a report but not clarifying *what a “report” is*. (*See*, for example, Ex. 4, cl. 2 (first time data), cl. 6 (network information and media consumption information).)

VIZIO’s construction is consistent with the prosecution history. The Examiner rejected the claims over Ladd’s error logs—the same reference at issue during the prosecution of the '928

Patent. (Ex. J, 020401-03, 021404-409, 021953-61.) For example, for the limitation of “storing a report in non-volatile memory,” the Examiner points to Ladd at Col. 19:58-20:17, which discusses “human readable error logs or records.” (Ex. J, 020401; Ex. D.) An Examiner is a POSA, and his understanding is instructive. *RF Cyber Corp.*, 2021 WL 5357465, at *10.

Contemporaneous technical dictionaries also support and confirm VIZIO’s construction that a “report” is a record or document that arranges and presents data in an organized manner. *See* Section III(A); *Inverness Med.*, 309 F.3d at 1369.

B. “core data” (Claims 1, 10, 13)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Not indefinite. Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	Indefinite.

When viewed in light of the intrinsic evidence, a claim must “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2129 (2014). If it does not, the claim fails § 112 and is therefore invalid as indefinite. *Id.* at 2124. Under this standard, the term “core data” is indefinite.

The term “core data” appears only in the claims, and not a single time in the specification. The asserted independent claims, claims 1 and 10, recite:

in response to the processor determining that the new reporting period has begun, the processor formatting a report having at least one attribute of the television, wherein the report comprises a set of **core data** associated with substantially static attributes of the television. (Ex. 4, cl. 1; *see also* cl. 10 (similar).)

The claim provides that “core data” must be “associated with substantially static attributes of the television,” but it does not identify or provide any examples of “core data.” The dependent claims are also not instructive. Claims 4 and 13 state “wherein the set [of] core data is created during a first power-up of the television and appended to each report thereafter.” (Ex. 4, cls. 4, 13.) This

is merely an example of *when* “core data” might be created, not an explanation of *what* “core data” is. Likewise, dependent claims 5 and 14 recite “software version, model, make, manufacturer, device identifier, and MAC address” as examples of “substantially static attributes of the television” but do not explain what constitutes “core data” that is “associated” with these examples. (Ex. 4, cls. 5, 14.)

The file history also does not provide guidance. The phrase “wherein the report further comprises a set core data associated with substantially static attributes of the television” was originally filed as a dependent claim. (Ex. J, 017537-38, cls. 4 and 13.) On June 29, 2015, after three Office Action rejections (Ex. J, 020397-404, 021402-411, 021949-962), the claims were amended to incorporate the dependent claim into the independent claim (Ex. J, 022725-28). In its associated remarks, the Applicant simply stated that the prior art does not teach the claim limitation as revised without mentioning “core data” at all. (Ex. J, 022731; *see also id.* at 027732-40 (no other reference to “core data” in the Response to Office Action).) The Examiner issued a Notice of Allowability afterward, which also did not mention “core data.” (Ex. J, 022748.)

Dr. Hugh Smith analyzed the disputed term from the perspective of a POSA at the time of the invention. (Ex. 8, ¶¶15-16.); *Nautilus*, 572 U.S. at 908 (“definiteness is to be evaluated from the perspective of someone skilled in the relevant art.”). Dr. Smith explains that “core data” is not a term of art and confirms that neither the specification nor claims define “core data.” (Ex. 8, ¶¶28-33.) As a result, a POSA would not understand the bounds of the claims because the term “core data” is indefinite. (*Id.*) Dr. Smith’s testimony is un rebutted as MMT has not offered any evidence from a POSA.

Because the specification provides no examples or explanation of what constitutes “core data” and “core data” is not a term of art, a POSA would not understand the scope and limit of the

claims, rendering the asserted claims indefinite.

C. “reporting period” (Claims 1, 10)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“a predetermined or scheduled interval of time in which [reports] can be generated.”

The claim language recites that a processor must determine that “a new reporting period has begun” and, if the determination confirms that a reporting period has begun, the “processor format[s] a report having at least one attribute of the television.” (Ex. 4, cl. 1.) Hence, reports are only generated at certain predetermined or scheduled times, *i.e.*, a “reporting period.” MMT’s AICs fail to identify a “reporting period.” (Ex. I, 2-10.) Given the absence of any specific allegations, VIZIO expects that MMT will argue for an overbroad construction, potentially allowing for *any* time a report is generated, it is during a “reporting period,” which VIZIO disputes. *O2 Micro*, 521 F.3d at 1362–63.

The specification describes the report generation process as follows:

In one embodiment, flowchart 1500 begins and step 1502 determines if a new reporting period has begun. If step 1502 determines a new reporting period has not begun, step 1502 may be repeated, and optionally include a delay or other trigger to reduce the demand on computing resources...If yes, step 1502 proceeds to step 1504 and a report is created. Step 1506 saves the report and processing continues back to step 1502.

(Ex. 4, 28:22-34, Fig. 15.) In other words, a reporting period is an interval when reports can be generated, consistent with the general definition of “period” in the context of time. (Ex. F, p. 1440 (“2. Any specified division or portion of time.”); Ex. K, p. 1303 (“1. length or portion of time.”).) Further, the “flowchart 1500” provides that if a new reporting period has not begun, the determination loop at step 1502 repeats. (Ex. 4, Fig. 15.) The specification also makes clear that not every point in time is a reporting period; otherwise, there would be no need to determine whether a new reporting period has begun. Thus, the start of a reporting period is a predetermined

or scheduled time, the “determination” of which is made at step 1502 in Figure 15.

The prosecution history supports VIZIO’s construction. During prosecution, the Applicant explained and argued:

The claim includes two periods - a report generating period and a report transmission period. A third period, the data gathering period, occurs before the report generating period. Reports are not created until the report generating period. Ladd does not teach a report generating period.

Ladd teaches that the error messages are received and stored in real time. The Office Action has equated the error message with the report in the claim. However, the error reports are not generated in the same manner as is claimed. **The error reports of Ladd are not generated during a report generating period but as the errors occur. Thus, Ladd teaches something different from what is claimed.** (Ex. J, 022732.)

Thus, in arguing to overcome the prior art, the Applicant clarified the “reporting period” comes after a data gathering period, meaning the reporting period is tantamount to a predetermined or scheduled time during which a report is generated (*i.e.*, after a data gathering period). (*See id.*) More importantly, the Applicant specifically argued that the invention does not allow for the generation of reports outside of a defined “report generating period” and that doing so was different than what was claimed, further confirming that reports may only be sent during predetermined or scheduled times. (*See id.*) To allow otherwise would recapture what the Applicant explicitly disclaimed.

D. “transmission period” (Claims 1, 10)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“a predetermined or scheduled interval of time when [reports] may be transmitted.”

The claims recite that a processor must determine whether a “new transmission period has begun.” Then, if it does, the processor further determines whether unsent reports are stored on the TV and transmits those unsent reports during the transmission period. (Ex. 4, cls. 1, 10.) By the plain language of the claims, reports can only be transmitted at a predetermined or scheduled time

(i.e., a “transmission period”). Like with “reporting period,” MMT’s AICs do not identify a “transmission period.” (Ex. I, 27-28.) Given the absence of any specific allegations, VIZIO expects that MMT will argue for an overbroad construction, potentially allowing for *any* time data is transmitted, it is during a “transmission period,” which VIZIO disputes. *O2 Micro*, 521 F.3d at 1362–63.

The specification, referencing Figure 16, describes report transmission follows:

In one embodiment, flowchart 1600 begins with step 1602 to determine if a new transmission period has begun. If no, step 1602 may loop back to itself, and optionally incorporate a delay or other trigger to reduce the demand on computing resources...If yes, processing continues to step 1604 to determine if any unsent reports exist. (Ex. 4, 28:36-47.)

In other words, a transmission period is an interval when reports can be transmitted, which is consistent with the general definition of “period” in the context of time. *See* Section IV(C). The specification confirms that not every point in time is a transmission period; otherwise, there would be no need to determine whether a new transmission period has begun. Thus, a transmission period is a predetermined or scheduled time, the start of which is determined at step 1602 in Figure 16.

E. “determining that a new reporting period has begun” / “determines that a new reporting period has begun” (Claims 1, 10)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“performing a check to see whether [reporting period / transmission period] has started”

Given VIZIO’s proposed constructions for “reporting period” and “transmission period,” set forth above, the remaining portion of the disputed phrases relate to the “determination” that such periods have begun. Neither the claims nor the specification provide specific guidance or examples of how such a determination might be carried out, but the prosecution history does.

On June 29, 2015, in response to continued rejections by the Examiner over Ladd, the

Applicant amended the claims to add the disputed phrases. (Ex. J, 022725-28.) The Applicant then argued the phrase “*the processor determining that a new transmission period has begun...determining that the stored report is unsent*” is not inherently disclosed by Ladd:

If Ladd were to inherently describe the elements of the claims, it must be apparent that the error reporting system of Ladd **would check** to see if the error reports are unsent before the network agent retrieves the unsent error reports. This is not apparent because the error reports, in Ladd, are either dropped by or registered with the error handling agent, and the network agent retrieves the events registered by the error handling agent. Ladd sends registered error reports, regardless of whether those error reports have been sent. **Thus, there is no need to check if the error report has been sent-** only if the error report has been registered. This example is only one of many different ways the error reports in Ladd could have been retrieved by the network agent. As such, Ladd cannot inherently teach the claims just because Ladd describes an error report. (Ex. J, 022734.)

The Examiner allowed the claims following the Applicant’s argument that the prior art does not perform checks. *Standard Oil Co. v. American Cyanamid Co.*, 774 F.2d 448, 452 (Fed. Cir. 1985) (prosecution history limits the interpretation of claims “to exclude any interpretation that may have been disclaimed or disavowed during prosecution in order to obtain claim allowance”). The Applicant specifically equated the claimed “determination” step with the processor performing an affirmative check to see if a condition is satisfied. *Trading Techs. Int’l, Inc. v. IBG LLC*, No. 10 C 715, 2019 WL 6609428, at *4 (N.D. Ill. Dec. 5, 2019) (“[A] patent applicant’s understanding of its own terms is especially probative.”). That concept is reflected in VIZIO’s proposed construction and should be adopted.

To the extent MMT argues that the “determination” at issue in the cited excerpt concerned checking whether unsent reports existed, it is black-letter patent law that a term is given the same meaning throughout a claim. *Frank’s Casing Crew & Rental Tools, Inc. v. Weatherford Int’l, Inc.*, 389 F.3d 1370, 1377 (Fed. Cir. 2004) (“[T]he same terms appearing in different portions of the claims should be given the same meaning...” (quoting *Fin Control Sys. Pty, Ltd. v. OAM, Inc.*,

265 F.3d 1311, 1318 (Fed. Cir. 2001); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (“[C]laim terms are normally used consistently throughout the patent.”).

V. U.S. PATENT NO. 9,055,255

A. “live TV broadcast content” (Claims 1, 19)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“content from a live television production broadcast in real time as events happen, and transmitted over the air” ⁴

The ’255 Patent claims are directed to presentation on a television screen of certain panels or “feature[s]” overlaid on “live TV broadcast content.” (Ex. 1, cls. 1, 10-11, 19.) MMT proffers “plain and ordinary meaning,” but VIZIO’s proposed construction reflects the patentee’s own definition of the terms “live TV” and “broadcast” in the specification.

Specifically, the patentee defined “live TV” as follows:

The term “Live TV,” as used herein, refers to a *television production broadcast in real-time, as events happen*, in the present. (Ex. 1, 6:50-52.)

Similarly, the specification states that, in “traditional *broadcast* television,” “the television signal is *transmitted over the air* by radio waves and received by a television antenna attached to the television.” (*Id.*, 3:35-41.) Such statements constitute classic lexicography. *GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014) (“To act as his own lexicographer, the patentee must ‘clearly set forth a definition of the disputed claim term,’ and ‘clearly express an intent to define the term.’”). MMT alleges that “live TV” and “broadcast” are “readily understood and need not be rewritten,” while ignoring that the patentee provided express definitions for these terms.

⁴ To narrow disputed issues, VIZIO has dropped the phrase “by radio waves” from its proposed construction.

MMT also argues that the definition for “broadcast” reflected in VIZIO’s construction relates only to “traditional” broadcast and should therefore be rejected. (Op. Br., 10.) MMT’s argument presumes that the specification delineates between “*traditional* broadcast television” and some *other*, unidentified “broadcast television.” But the specification makes no such delineation; the word “broadcast” is used consistently throughout the specification to distinguish between over-the-air broadcast transmissions and other forms of transmitting media or content, “e.g., Internet, over-the-top content, on-demand streaming media.” (Ex. 1, 6:9-14.) The specification further distinguishes “cable TV” from “traditional broadcast television,” by describing broadcast television as “in which the television signal is transmitted over the air by radio waves and received by a television antenna attached to the television.” (Ex. 1, 3:35-41.)

VIZIO’s construction does not, as MMT contends, improperly read in a limitation from the written description from the claims; it reflects the patentee’s own lexicography.

B. “the first portion of the display includes substantially an entire area of a screen of the TV” (Claims 1, 19)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning where “substantially” means “greater than 50%”	Indefinite.

When the Court construed this term in the *MMT v. LG* matter, it expressly noted the absence of “any evidence or testimony to show that a person having ordinary skill would be unable to ascertain the scope of the invention.” (*LG* Order, 35.) VIZIO disclosed to MMT its intention to rely on expert testimony to support this claim term in its Rule 4-2 disclosure and again, with additional specificity at MMT’s request, in advance of the Rule 4-3 deadline. (*See* Ex. M.) MMT, therefore, had more than sufficient opportunity to “provide commensurate, fulsome expert testimony regarding [this term] if it elected to do so.” (*See id.*) It did not. Because VIZIO’s expert’s un rebutted testimony makes clear that the term does not inform a POSA of the scope of the claim

with reasonable certainty, the Court should find it indefinite.

In the *MMT v. LG* matter, the Court concluded in the absence of any expert testimony that the “claims illustrate the various portion’s respective sizes and relationships to each other.” (*LG Order*, 33.) Dr. Houh disagrees, however, that the claims adequately identify the respective sizes of each “portion” of the screen or how the sizes of the different portions relate to one another. (Ex. 6, ¶ 44 (“According to the claim, then, the first portion of the display must be ‘substantially’ the entire screen, but the claim also refers to an unknown amount of ‘overlap[]’ between the two other portions of the screen which, themselves, must be ‘less than an entire area of a screen of a TV.’ A POSITA could not determine, reading the claims, what might be considered ‘substantially an entire area’ of the screen.”).) The Court also noted, without the benefit of expert testimony, that the specification “provides more information,” pointing to one figure. (*LG Order*, 33.) In his declaration, though, Dr. Houh pointed out multiple places in the specification that fail to inform a POSA when certain content includes “substantially an entire area of a screen” and when it does not. (Ex. 6, ¶¶ 42-43.)

As a result, Dr. Houh’s un rebutted testimony is that a POSA would not understand the bounds of the claims because the term “the first portion of the display includes substantially an entire area of a screen of the TV” is indefinite. (*Id.*, ¶ 46.)⁵

VI. U.S. PATENT NO. 9,426,527

A. “item of VOD content” (Claims 1, 7)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“video selectable by users for watching on demand”

⁵ MMT makes much of certain consistencies between Dr. Houh’s declaration and LG’s claim construction brief on this term. However, that Dr. Houh’s opinions are consistent with arguments made by LG actually supports a finding of indefiniteness.

MMT argues that “item of VOD content” should be given its “plain and ordinary meaning” (Dkt. 91, 11), but its infringement theory applies the term in a way that is anything but that. Specifically, the Parties’ dispute stems from MMT’s theory that “each VOD *application* (e.g. Netflix and Prime) comprises an item of VOD content.” (Ex. L, 13.) Because the parties dispute the scope of this term, it requires construction. *O2 Micro*, 521 F.3d at 1362–63.

The specification defines Video On Demand (“VOD”) as follows:

The term “*video on demand (VOD)*,” or “video-on-demand,” *as used herein, refers to systems and processes which allow users to select and watch/listen to video or audio content on demand. VOD systems may stream content, to view the content in real time, or download the content to a storage medium for viewing at a later time.* (Ex. 2, 19:11-16.)

In other words, the specification teaches that an item of VOD content is a video selectable by users for watching on demand. MMT argues that the above-quoted passage “does not require that the item of content itself is selectable.” (Dkt. 91 at 12 (emphasis omitted).) But MMT misses the point. The concept of providing “on demand” video requires allowing users to make a “demand” for specific video content; *i.e.*, the user must be able to select the video content they wish to view. Indeed, selectable video content distinguishes a “video on demand” system from broadcast television, for example.

The specification further discloses that “[c]ontent can mean any video, picture, music, or other multimedia that may be available to the user for viewing on the Intelligent TV 100.” (Ex. 2, 42:18-20.) MMT argues that the phrase “can mean” in the above-quoted passage is “at most [a] permissive description[]” that does not “require that the item of VOD content itself is ‘selectable by users.’” (Dkt. 91, 12.) VIZIO’s point, however, is that the specification does not contemplate that “content” can be an application, but makes clear that “content” is video that a user watches on the TV. And as explained above, the very concept of “on demand” requires that the video content

be selectable by users who wish to view it.

Finally, the '527 Patent distinguishes between a “VOD application” and the videos—*i.e.* the items of VOD content—provided by the application. For example, the specification teaches that the “*VOD application 456 can provide for video* from different storage sources. Unlike Live TV application 452, VOD 456 provides for display of videos that are accessed from some memory source.” (Ex. 2, 32:11-14.) Thus, the specification makes clear that the VOD application *provides content*, but the application is not itself “content.” MMT repeats its “at most [a] permissive description[]” argument with respect to “can provide” in the above-quoted passage but, again, misses the point. This passage shows that VOD applications are distinct from the video content they provide, and thus applications are outside the scope of an “item of VOD content.” MMT cites no evidence that the inventors intended for an application to fall within the scope of the claimed “item of VOD content.”

Considering the intrinsic record discussed above, the specification makes clear that an “item of VOD content” is a video selectable by users for watching on demand.

B. “storing, by the processor, the metadata characteristics with the content in the file in a database for each of the two or more items of VOD content” (Claim 1)

MMT’s Proposed Construction	VIZIO’s Proposed Construction
Plain and ordinary meaning as informed by the intrinsic evidence; no construction necessary.	“the processor storing the metadata characteristics and the video ⁶ content together in the same file in a database for each of the two or more [items of VOD content]”

VIZIO’s construction emphasizes the most natural reading of this disputed claim

⁶ MMT argues that VIZIO’s construction creates antecedent basis issues with respect to “the video content.” If that is the case, VIZIO will agree to remove the “video” portion of its construction as follows: “the processor storing the metadata characteristics and the ~~video~~ content together in the same file in a database for each of the two or more [items of VOD content].”

limitation, which is that the processor stores the metadata characteristics and the video content together in the same file in a database for each of the two or more items of VOD content.

MMT asserts that “Figure 14 does not show the metadata and content as part of the same file.” (Dkt 91, 14.) MMT is wrong. The specification teaches that Figure 14 depicts a “database 1400” wherein the “metadata field 1420” and “content field 1424” are stored in the same “data structure[] 1404”—*i.e.* in the same file. (Ex. 2, 41:1-16.) Claim 1 recites, in relevant part, that metadata characteristics are determined, a file is created for each item of VOD content, and that the metadata characteristics are stored “with the content *in the file* in a database.” (*Id.*, 56:40-46.) The most natural reading of this claim limitation in view of the teachings of the specification is that the words “in the file” indicate that the metadata characteristics are stored in the same file that claim 1 recites is created for each item of VOD content, and that the file containing both the metadata characteristics and the video content is stored “in a database.”

Importantly, claim 1 never recites “storing the item of VOD content in a file” by itself, separately from the metadata characteristics, or in a different file than the metadata characteristics. Nor does claim 1 recite creating a file for storing the metadata characteristics that is different from the file created for “each item of VOD content.” Rather, the claim recites the step of “creating... a file for each item of VOD content” and then recites “storing... the metadata characteristics *with* the content *in the file* in a database...” (*Id.*, 56:42-46.) The only “storing” limitation in claim 1 thus recites storing both the metadata characteristics and the video content together, in the same file, in the database.

VII. CONCLUSION

For the reasons set forth above, VIZIO respectfully requests that the Court construe the disputed terms and adopt VIZIO’s proposed constructions.

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/s/ Steven W. Hartsell

Paul J. Skiermont (TX Bar No. 24033073)
Steven W. Hartsell (TX Bar No. 24040199)
Ryan A. Hargrave (TX Bar No. 24071516)
Michael D. Ricketts (TX Bar No. 24079208)
SKIERMONT DERBY LLP
1601 Elm Street, Suite 4400
Dallas, TX 75201
Phone: (214) 978-6600
Fax: (214) 978-6601
pskiermont@skiermontderby.com
shartsell@skiermontderby.com
rhargrave@skiermontderby.com
mricketts@skiermontderby.com

Rex Hwang (CA Bar No. 221079)
SKIERMONT DERBY LLP
633 W. Fifth Street, Suite 5800
Los Angeles, CA 90071
Phone: (213) 788-4500
Fax: (213) 788-4545
rhwang@skiermontderby.com

Cono A. Carrano (DC Bar No. 445995)
Ryan S. Stronczer (DC Bar No. 1002264)
AKIN GUMP STRAUSS HAUER & FELD LLP
2001 K Street NW
Washington, DC 20006
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
ccarrano@akingump.com
rstronczer@akingump.com

George Andrew Lever Rosbrook (TX Bar No. 24070141)
AKIN GUMP STRAUSS HAUER & FELD LLP
112 East Pecan Street, Suite 1010
San Antonio, TX 78205
Telephone: (210) 281-7000
Facsimile: (210) 224-2035
arosbrook@akingump.com

Of Counsel:

Charles Everingham IV (TX Bar No. 00787447)
Email: ce@wsfirm.com
WARD, SMITH & HILL, PLLC

1507 Bill Owens Parkway
Longview, Texas 75604
(903) 757-6400 (telephone)
(903) 757-2323 (facsimile)

Attorneys for Defendant
VIZIO, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2024, 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/ Steven W. Hartsell