

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

SCALE VIDEO CODING LLC,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

C.A. No. 4:23-cv-00803-SDJ

JURY TRIAL DEMANDED

PLAINTIFF'S REPLY CLAIM CONSTRUCTION BRIEF

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I. NO CONSTRUCTION IS NECESSARY FOR THE DISPUTED CLAIM TERMS

A. “identify[ing] bandwidth-limited conditions of an internet protocol network between [the/a] video router and a [plurality/set] of video receivers” (claims 1, 6, and 11)

Throughout its brief (Dkt. 24, “Opp.”), Defendant considers only the broader phrase “bandwidth-limited conditions” in isolation in arguing that the disputed term as a whole is indefinite. When the disputed term is considered in its entirety (as it should be), even a cursory review of the evidence proves Defendant wrong.

First, Defendant does not offer any justification for overlooking the phrase “of an internet protocol network” in its Rule 4-2 and 4-3 disclosures. Nor does it substantively address the phrase in its brief, whether affirmatively or in rebuttal.

Second, Defendant now also overlooks the critical phrase “identify/identifying.” The claims do not merely recite “bandwidth-limited conditions” in the abstract; they recite “***identify[ing]*** bandwidth-limited conditions of an internet protocol network” As SVC and Mr. Adams have explained, a POSITA familiar with streaming video and networking technologies would have known to discern the scope of this term with reasonable certainty. *Tinnus Enters., LLC v. Telebrands Corp.*, 733 F. App’x 1011, 1020 (Fed. Cir. 2018) (“To comport with 35 U.S.C.S. § 112’s definiteness requirement, the boundaries of the claim, as construed by the court, must be discernible to a skilled artisan ***based on the language of the claim***”)

Having extensively reviewed the specifications and the claims, Mr. Adams concluded that this term refers to “the ***capability*** of a video router system to ***analyze the network*** between itself and multiple video receivers to determine if there are any constraints on the available bandwidth and make informed decisions about how to transmit the layered video data stream effectively, considering the limitations of the network’s bandwidth, i.e. its capacity to carry

traffic.” (Dkt. 22-2 ¶ 61; see also ¶¶ 64, 65, 67 (explaining the relevance of the phrase “internet protocol network”).) Mr. Adams also identified portions of the specification that provide objective examples of how a router identifies bandwidth limited conditions and responds to them: Dkt. 1-1 at 1:50-67 (describing the challenges posed by bandwidth limitations in multicast transmission over IP networks and the consequences of such limitations on data transmission quality and network performance; and further teaching that discarding packets is a way of identifying bandwidth limited conditions); and 1:61-2:1 (describing that data corruption is a consequence of bandwidth limitations and explaining that the only way to avoid the problems caused by bandwidth limitations is to find a transmission rate that is supported by all parts of the network).

Defendant also overlooks entire descriptions of algorithms and techniques for how a router identifies and responds to bandwidth-limited conditions: Dkt. 1-1 at 21:25-22:5 (describing the need for *prioritization and careful management* of data transmission to ensure the delivery of essential information in light of network congestion, such as by using priority numbers to prioritize packets for forwarding); *see also* Dkt. 22-2 ¶¶ 67-69, 70-73. For example, Defendant overlooks the teaching of an exemplary Congestion Control Interceptor (CCI) which is used to implement “bandwidth allocation rules” (to manage and allocate available bandwidth efficiently. (Dkt. 1-1 at 26:23-24; Dkt. 22-2 ¶ 74.) The CCI is therefore another example of the explicit guidance provided to a POSITA regarding the scope of this term.

Defendant similarly overlooks the specification’s explicit disclosures of intentional packet reordering, timeout settings, congestion detection mechanisms, and their impacts on packet delivery and network performance described in the specification as other considerations and techniques described in the specification to identify and address bandwidth-limited conditions. (Dkt. 1-1 at 29:18-49.) Defendant also overlooks the specification’s teachings of the

various mechanisms for managing packet loss and compensating for bandwidth constraints within the network, (*id.* at 4:29-67), and its description of alternative algorithms, layering techniques, and simulcasting approaches to adapt to fluctuating bandwidth conditions and ensure efficient data transmission while meeting the diverse needs of clients. (*Id.* at 33:1-19.) As Mr. Adams confirms, each of these disclosures individually and in the aggregate provide a POSITA reasonable certainty regarding “*identifying* bandwidth-limited conditions of an internet protocol network” and reacting to them. (Dkt. 22-2 ¶¶ 75-89.)¹

Defendant’s arguments are all unavailing. First, Defendant argues that “‘bandwidth-limited conditions’ is a term of degree.” (Opp. at 8.) This argument fails in the first instance because Defendant does not define a “term of degree” or provide any evidence that “bandwidth-limited conditions” is in fact a “term of degree.” But importantly, as set forth, the disputed term is not “bandwidth-limited conditions”; it is “*identify[ing] bandwidth-limited conditions of an internet protocol network* between [the/a] video router and a [plurality/set] of video receivers.” In overlooking the operative “identifying” action, Defendant also overlooks the numerous embodiments and teachings of the specification regarding how a router identifies bandwidth-limited conditions and reacts to the “identification” by selectively forwarding one or more enhancement layers, but fewer than all, to the video receivers.

But even to the extent the disputed term here involves a “term of degree,” courts have found terms of degree definite so long as “it provide[s] enough certainty to one of skill in the art when read in the context of the invention.” *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1370 (Fed. Cir. 2014). That is precisely the situation here, in light of the examples in the

¹ Indeed, Defendant’s counsel had planned to question Mr. Adams at deposition on ¶ 75 of his declaration—and his opinions regarding 29:18-31 of the specification—but decided to “skip” that paragraph. (Adams Dep. Tr. at 62:12-15.) Nor does Defendant address ¶ 75 in its brief. Therefore, those opinions and specification cites are unchallenged.

specification. *See Sonix Tech. Co. v. Publ'ns Int'l, Ltd.*, 844 F.3d 1370, 1377-79 (Fed. Cir. 2017) (reversing finding of indefiniteness where examples in the specification provided sufficient guidance to a POSITA as to the scope of the claim). Courts in this district and the Fifth Circuit have similarly not hesitated to construe claims reciting terms of degree. *See, e.g., Tinnus Enters., LLC v. Telebrands Corp.*, No. 6:16-CV-00033-RWS, 2017 U.S. Dist. LEXIS 219838, at *8 (E.D. Tex. Sep. 14, 2017) (finding no construction necessary for the term “sufficiently limited”); *Legacy Separators LLC v. Halliburton Energy Servs.*, No. 4:14-CV-2081, 2016 U.S. Dist. LEXIS 69381, at *26-31 (S.D. Tex. May 26, 2016) (finding terms “sufficiently vacated” and “substantially separated” not indefinite); *see also Verve v. Crane Cams*, 311 F.3d 1116, 1120 (Fed. Cir. 2002) (vacating finding of indefiniteness of term “substantially constant wall thickness”).

For this reason, it is also entirely irrelevant that “bandwidth-limited conditions” or “bandwidth-limited” are not found verbatim in the specification. Indeed, here, as in *Sonix*, a POSITA may easily compare a potentially infringing product to the exemplary algorithms and techniques in the specification to determine infringement. *Sonix*, 844 F.3d at 1379.

But even under Defendant’s simplistic view—that a POSITA would require “objective boundaries” to understand the term—the “bandwidth-limited conditions” recited in the claims result in scenarios that can be objectively measured or “identified,” such as packet loss, delay, degradation, or corruption, as Mr. Adams confirmed. (Dkt. 22-2 ¶ 90; Adams Dep. Tr. at 37:14-20; 43:22-44:14; 48:7-23; 77:23-78:2.) For example, a POSITA would be able to measure “whether bandwidth is or is not sufficient” with an analyzer. (Adams Dep. Tr. at 36:16-19.)

Defendant’s next argument—that the term is indefinite because SVC allegedly offered “four different proposed constructions for ‘bandwidth-limited conditions’”—misses the mark for several reasons. (Opp. at 9.) First, none of the “proposed constructions” Defendants reproduce

are **constructions** of the actual term in dispute here: “identify[ing] bandwidth-limited conditions of an internet protocol network between [the/a] video router and a [plurality/set] of video receivers.” Rather, in the cited paragraphs, Mr. Adams opined on his understanding of **portions** of the disputed term, to demonstrate that a POSITA would understand the disputed term with reasonable certainty. As Defendant acknowledges, the specification spans thirty-four columns, so it is unsurprising that it contains several embodiments that serve as **examples** to inform a POSITA as to their scope. No construction of this term is necessary, because a construction cannot be limited to any particular examples in the specification. *Cont’l Circuits LLC v. Intel Corp.*, 915 F.3d 788, 796 (Fed. Cir. 2019) (absent clear disavowal, it is improper to limit the claims to a single preferred embodiment). Moreover, Defendant’s underlying premise—that the breadth of the phrases “bandwidth-limited conditions” or “identifying bandwidth-limited conditions” renders the disputed term indefinite—is legally erroneous, because “breadth is not indefiniteness.” *BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360, 1367 (Fed. Cir. 2017); *Niazi Licensing Corp. v. St. Jude Med. S.C., Inc.*, 30 F.4th 1339, 1347 (Fed. Cir. 2022) (“a claim is not indefinite just because it is broad”); *Cardware Inc. v. Samsung Elecs. Co.*, No. 2:22-CV-141-JRG-RSP, 2023 U.S. Dist. LEXIS 148405, at *26 (E.D. Tex. Aug. 22, 2023) (finding that the terms “device-specific [information]” and “user-specific information,” although broad, are not indefinite).

For this reason, it is also irrelevant to indefiniteness whether there are any minor differences in verbiage or examples between Mr. Adams’s four alleged “definitions.” (Opp. at 11-12.) While there are no substantive “inconsistencies” in Mr. Adams’s opinions, none of his opinions are individually intended to offer a “construction” of any term or phrase. Nor is a claim term indefinite “merely because parties disagree concerning its construction.” *Haemonetics Corp. v. Baxter Healthcare Corp.*, 607 F.3d 776, 783 (Fed. Cir. 2010).

Second, Defendant is factually wrong that Mr. Adams “fails to offer a basis for many of these definitions.” For example, in ¶¶ 62-63 and ¶¶ 67-89, Mr. Adams was explaining his understanding of the claim language from the perspective of a POSITA and further cited several portions of the specification in support. Later, in ¶ 90, Mr. Adams was summarizing the teachings of the specification he explicitly cited in ¶¶ 67-89. As Mr. Adams clarified at deposition, his declaration is intended to be read in the context of the entire document and in the context of the specification. (Adams Dep. Tr. at 80:5-14.)

Third, Defendant is wrong that the prosecution history of the ’372 patent has any bearing on indefiniteness. At deposition, Dr. Wenger testified that he was not relying on the prosecution history for any of his indefiniteness opinions. (Wenger Dep. Tr. at 57:16-58:11.) And in any event, the excerpts of the prosecution history cited by Dr. Wenger and Defendant are inapposite because they pertain to limitations that are no longer in the claims of the issued ’372 patent. (Dkt. 22-3, ¶¶ 43-44, 47-48.) *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005) (“[B]ecause the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes.”); *see also Genesis Alkali Wyo., LP v. Ciner Res. LP*, No. 18-1879-LPS-JLH, 2020 U.S. Dist. LEXIS 190159, at *14 (D. Del. Oct. 14, 2020) (giving portion of prosecution history no weight because it referred to language no longer in the claim). In relying on the applicant’s statements regarding language no longer in the claims, Defendant and Dr. Wenger violate the maxim that “the prosecution history may not enlarge, diminish, or vary the claims themselves.” *Twist, Inc. v. B GSE Grp., LLC*, No. 3:19-cv-00583-MOC-DSC, 2021 U.S. Dist. LEXIS 102236, at *1 (W.D.N.C. June 1, 2021).

In contrast, Mr. Adams studied the claims and specification of the ’372 patent as issued in rendering his opinions on the meaning and scope of the disputed terms. Those intrinsic

sources are sufficient to establish that the disputed terms are not indefinite.

B. “bandwidth sufficient conditions” (claim 11)

Defendant again overlooks relevant claim language: “*all* of the set of enhancement layers.” As Mr. Adams explained in his declaration, a POSITA would understand that the term refers to a scenario where the available network resources can fully support the higher data rate needed for transmitting all enhancement layers concurrently to at least two video receivers capable of handling higher bandwidth requirements. (Dkt. 22-2 ¶ 144.) Defendant also overlooks Mr. Adams’s subsequent explanation that the determination can depend not only the network characteristics, but also the characteristics of the video stream. (*Id.* ¶ 145; see also ¶¶ 146-47.) Therefore, Defendant’s simplistic assertion that this term is the “opposite” of “bandwidth-limited conditions” (which is not a disputed term), misses the mark.

Defendant also overlooks the fact that Dr. Wenger himself opined that this term can describe a scenario where “the network connection that couples the receivers to the ‘scalable video router’ . . . as having ‘sufficient’ or ‘insufficient’ bandwidth or capacity.” (Dkt. 22-3 ¶ 82.) And the portions of the specification he cites further confirm that this term is reasonably certain to a POSITA. (*Id.* ¶ 82, citing Dkt. 1-1 at 1:55-57, 4:33-37, 21:42-45, 31:19-23.) Defendant cannot distance itself from Dr. Wenger’s opinions. Its purported confusion regarding whether “receivers *have* bandwidth-sufficient conditions” is a red herring. (Opp. at 16.) Mr. Adams already explained that *in the context of the surrounding claim language*, the phrase “forwards . . . to at least two of the video receivers . . . with bandwidth sufficient conditions” refers to forwarding all enhancement layers to a video receiver as long as there is sufficient bandwidth on the network segment to that receiver for that video stream. (Dkt. 22-2 ¶¶ 144-47.) This term is therefore not indefinite, and no construction is necessary.

- C. **“selectively [forward/forwards/forwarding] one or more of the set of enhancement layers, but fewer than all of the set of enhancement layers, to at least two of the plurality of video receivers through the internet protocol network based upon the identified bandwidth-limited conditions” (claims 1, 6, 11)**

Defendant overlooks the numerous disclosures from the specification regarding how the video router selectively chooses which enhancement layers to forward. Specifically, a router may selectively forward enhancement layers based on: (1) the criticality of the layers (e.g., Dkt. 1-1 at 5:22-25; Dkt. 22-2 ¶ 106); (2) quality of service (e.g., Dkt. 1-1 at 21:25-22:5, Dkt. 22-2 ¶ 107); (3) priority numbers (Dkt. 1-1 at 21:30-37; 21:38-52; 21:61-63); (4) receiver capabilities (e.g., Dkt. 1-1 at 21:61-63; Dkt. 22-2 ¶ 110); (5) buffer/queue status (e.g., Dkt. 1-1 at 22:59-60; Dkt. 22-2 ¶ 111); and (6) fair bandwidth allocation rules (e.g., Dkt. 1-1 at 22:62-65; Dkt. 22-2 ¶ 113.) Other factors include at least the following: (1) real-time bandwidth monitoring (Dkt. 1-1 at 29:11-17); (2) quality and reliability assessment using a packet arrival history (*id.* at 29:50-57); (3) moving average calculation of packet loss over a period of time (*id.* at 29:57-64); (4) retransmission requests and responses (*id.* at 29:44-49; 30:54-67); (5) and priority and ordering considerations to maintain the order of packets across layers to ensure coherent delivery (*id.* at 30:13-33). (Dkt. 22-2 ¶ 116.)²

Instead, Defendant’s only argument is that some of the above factors (particularly, those enumerated in Dkt. 22-2 ¶ 116), relate to “assessments made at or by a receiver” and are therefore “inapposite.” (Opp. at 18 n.7.) But Defendant again overlooks the claim language as a whole and the totality of the evidence. As Mr. Adams previously explained, a router may “identify bandwidth-limited conditions of an internet protocol network” by objectively assessing or measuring scenarios resulting from the “bandwidth-limited conditions,” including, for

² Dr. Wenger himself is aware of several criteria that can be used for “selective forwarding.” (<https://www.rfc-editor.org/rfc/rfc7667> (“The [selective forwarding] decision may be driven by a number of factors, such as available bitrate, desired layout, etc.”).)

example, packet loss, delay, degradation, or corruption. (Dkt. 22-2 ¶ 90; Adams Dep. Tr. at 37:14-20; 43:22-44:14; 48:7-23; 77:23-78:2.) The fact that some of these assessments may be made at a receiver in the first instance does not preclude the router from subsequently receiving those assessments from the receiver, for example, via retransmission requests. (Dkt. 1-1 at 29:44-49; 30:54-67.) In doing so, the router is *identifying* bandwidth-limited conditions and, in response, selectively forwarding enhancement layers. Defendant’s argument is therefore another red herring and fails to demonstrate indefiniteness.

Nor should Defendant’s “alternative construction” be adopted. It is undisputed that besides a “layer identifier,” the specification teaches using at least a “priority value” as another criteria for selectively forwarding enhancement layers. (Opp. at 20 (“the specification . . . describes identifying layers to forward using a priority value, which is akin to the claimed ‘layer identifier’”).) But Defendant does not offer *any basis* to exclude “priority value” from its proposed construction. Nor do Defendant’s arguments purporting to equate the two terms suffice. As explained in SVC’s opening brief, a “priority value” corresponds to data packets within a layer, not necessarily to the entire layer. (Dkt. 1-1 at 21:25-28; Dkt. 22-2 ¶ 132.) Other identifiers (such as a sequence number) are relevant to the selection of enhancement layers as well. (Dkt. 1-1 at 25:27-33; 28:59-63.)³ And importantly, Defendant either overlooks or relegates to a footnote the numerous other criteria explicitly taught by the specification as criteria for selectively forwarding: the capabilities of each receiver (Dkt. 1-1 at 33:15-19), quality information (*id.* at 5:22-25, 30:1-11, 30:12-33; 29:50-57, 29:57-64, 33:1-7, 33:15-19), priority information (*id.* at 21:25-28, 21:30-37, 21:61-63, 22:62-63), and/or buffer/queue status (*id.* at

³ Defendant’s assertion that a sequence number pertains only to a receiver (Opp. at 21 n.9) misses the point. A sequence number is assigned to a packet at the time of transmission from the router, not assigned by the receiver after reception. Therefore, a sequence number indisputably serves as an identifier for selectively forwarding, in addition to a layer identifier and a priority value.

22:59-60, 29:18-31, 23:45-59, 23:60-24:20, 24:21-67). (Dkt. 22-2 ¶ 130.)⁴

Because Defendant’s “alternative construction” would exclude several preferred embodiments, it should be rejected. *SynQor, Inc. v. Artesyn Techs., Inc.*, 709 F.3d 1365, 1378-79 (Fed. Cir. 2013). No construction is necessary.

D. “the video receiver” (claims 2 and 7)

Mr. Adams explained, based on the specification, that this term refers to *each* of the “at least two” video receivers that the video router selectively forwards layers to. Contrary to Defendant’s assertion, his opinion was not “arbitrary”; it is based on the claim language as a whole. Here, claim 2 recites “the video router *further selectively forwards . . . based on video processing capabilities of the video receiver.*” A POSITA reading this claim as a whole and in the context of claim 1 would recognize that “the video receiver” could not correspond to any other video receiver besides a receiver that the router is selectively forwarding to. Defendant’s other “reasonable options” are unsupported. For example, Defendant does not explain why “forwarding” (of the base layer alone) would depend on “video processing capabilities” of one or each video receiver. The base layer is transmitted to each video receiver without “selectiv[ity].” (Dkt. 22-2 ¶¶ 42-43, 58.) Defendant also does not explain why it would be sufficient to consider the capabilities of only one receiver. As the specification and Mr. Adams explain, each receiver may have different capabilities, and it is necessary to consider the capabilities of each receiver that the router is selectively forwarding to. (Dkt. 22-2 ¶¶ 137, 139; Dkt. 1-1 at 33:15-19.) Therefore, “option 4” is the only reasonable option left. (*See* Opp. at 24-25.)

⁴ To the extent any of these criteria are contended to be assessed by a receiver, the router is undoubtedly informed of them via, e.g., retransmission requests, and can use them to identify bandwidth limited conditions and selectively forward enhancement layers. Defendant does not offer *any* evidence or opinion that these criteria are not used for selectively forwarding.

II. CONCLUSION

For the reasons set forth above and in its Opening Brief, SVC requests that the Court find that no construction is necessary for any of the disputed terms and that Cisco has failed to meet its burden of establishing that any claim of the '372 patent is indefinite.

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Robert Kiddie
Robert Kiddie