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14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
15

16 B.S.D. CROWN, LTD.,

17 Plaintiff,

18 v.

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20 AMAZON.COM, INC., AMAZON WEB
21 SERVICES, INC. and AMAZON.COM
22 SERVICES, LLC

23 Defendants.
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25
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27
28

Case No. 3:24-CV-03503-JD

**PLAINTIFF B.S.D. CROWN, LTD.'S
CLAIM CONSTRUCTION REPLY BRIEF**

Date: May 29, 2025

Time: 11:00 a.m.

Location: Courtroom 11, 19th Floor

Judge: Hon. James Donato

I. INTRODUCTION

Defendants’ Response distorts U.S. Patent No. 8,934,887 Patent (“Patent”) from its intended purpose of offloading computationally intensive tasks “in which a mobile device acts as an input/output interface for a user, and actual processing, storage and network interfaces are performed by a remote server,” 1:15-18, such that a “[u]ser should not feel that the mobile device 10 behaves differently from a conventional mobile device in which functionality is executed locally. 9:49-52. To self-servingly recast the Patent as “directed to [imitating] a mobile device by processing the mobile device hardware and software at a remote server,” (Resp. at 1, citing 3:12-67), Defendants break fundamental rules of claim construction, importing nonlimiting terms from the preamble, ignoring claim differentiation, and interpreting terms to exclude preferred embodiments. They even refuse to consider constructions that mitigate potential jury confusion.

II. ARGUMENT

A. Term 1: “a method for emulating a mobile device at a server”

BSD: This term need not be interpreted because the preamble is not limiting

Amazon: Preamble is limiting / “A method for a server to imitate, i.e. act as if it is, a mobile device.”

1. The preamble is not limiting.

Defendants’ argument that the preamble recites essential structure or steps, or is necessary to give “life, meaning and vitality to the claim” (i) relies on inapposite cases, (ii) misleads as to the specification’s use of, and reliance on, “emulation,” (iii) and misrepresents the patentee’s statements distinguishing prior art related to mobile device OS.

Defendants rely on *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251 (Fed. Cir. 1989) for the proposition that the Court must look to the entire patent to understand “what the inventors actually invented and intended to encompass by the claim.” Resp. at 3, quoting 868 F.2d at 1257. *Corning* is inapplicable here. **First**, as Defendants imply, this case is distinguishable at least because in *Corning*, the disputed language was “mentioned only in the preamble” of the claims (which were directed to structures and compositions). Resp. at 3. Here, in contrast, both the preambles of the independent claims (1 and 11) and the body of dependent claims (2 and 12) recite “emulating.” See 13:59-61; 14:61-64. That is important because the presumption that “when a patent claim ‘does not contain a certain limitation and another claim

1 does, that limitation cannot be read into the former claim . . . is especially strong when the
 2 limitation in dispute is the only meaningful difference between an independent and dependent
 3 claim, and one party is urging that the limitation in the dependent claim should be read into the
 4 independent claim.” *SunRace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1303 (Fed. Cir.
 5 2003) (citations omitted). Here, because Claims 1 and 11 already require the mobile device OS
 6 to be executed on the server (where the server mobile device OS may be different from that on
 7 the mobile device itself, Opening, 9-10), “emulating mobile device HW” is the only material
 8 difference between the Claims (1 and 11) and (2 and 12, adding mobile device HW emulation).

9 **Second**, Defendants’ specification-based arguments fail to change the Patent’s meaning.
 10 The Patent as a whole makes clear that the inventors sought to address the need for high-
 11 performing mobile device hardware and software across different OS (Opening at 9-10) and, to
 12 offload computationally intensive tasks from a mobile device, decoupling hardware capabilities
 13 from actual mobile device performance and user experience. *See* 2:19-21. Defendants’ collection
 14 of six examples of the specification’s use of “emulated” (Resp. at 3-4) changes nothing. Five of
 15 those examples relate to *mobile device hardware*, an explicit term of Claims 2 and 12, while the
 16 sixth refers to user interface information,” a term that does not appear in and, thus, is unrelated to
 17 the “mobile device” in the preamble. In fact, the specification associates “emulated” with many
 18 topics, but never the “mobile device.” In the “Detailed Description,” the term “emulat*” appears
 19 in connection with “mobile device hardware” (15 times), “storage hardware,” “WiFi driver,”
 20 “GPU driver,” “display,” “display information,” “audio speaker driver,” (once each), “touch
 21 screen driver,” “user interface information,” and “user experience,” (twice each). Thus, it cannot
 22 be said that “[t]he specification consistently underscores emulating a *mobile device* as a
 23 fundamental characteristic of the claimed invention.” *See* Resp. at 4.¹

24 **Third**, Defendants’ argument that “[c]lear reliance on the preamble during prosecution to
 25 distinguish the claimed invention from the prior art *may* indicate that the preamble is a claim
 26 limitation” and “BSD also used the concept of ‘emulating a mobile device’ to distinguish the
 27 claimed invention from prior art” is misguided. Resp. at 4 quoting *In re Cruciferous Sprout*

28 ¹ All emphases added, unless stated otherwise.

Litig., 301 F.3d 1343, 1347 (Fed. Cir. 2002). In *Cruciferous Sprout*, the Court found “clear reliance” because the patentee distinguished the prior art in the PTO by explicitly telling the examiner it intended the preamble to breathe life into the claim: “Although ‘rich in glucosinate’ is recited in the preamble of the claim, the pertinent case law holds that the preamble is given weight if it breathes life into the claim.” *Id.* at 1348. That contrasts starkly with BSD’s Background of the Invention, where it distinguished the ’071 application based on reference to the mobile device **OS** (not “the mobile device”), a separately claimed element that appears *in the body* of the claims, not the preamble, and which is responsible for processing the input from a mobile device, producing user interface information based on it and sending it back to the mobile devices. Defendants overreach in arguing, “That is almost identical to the language of the preamble.” Resp. at 4. Here, “almost” is not enough – a mobile device OS is *not* a mobile device. *Cruciferous Sprout* simply does not set out an “almost identical” standard.

2. No Recapture: BSD elected claims related to steps performed at a server.

BSD’s election during prosecution relates to what structure – the mobile device or the server – does the specific work. In contrast to the issued claims, which focus on the actions at the server, each of the 19 claims in the withdrawn groups, focus on actions at the mobile device. As Defendants note, the examiner emphasized the utility of the elected group as relating to “emulating and executing functions of a mobile device by a remote server.” Resp. at 5, quoting Dkt. 54-1 at 187. Defendants fundamentally misunderstand: the examiner does not suggest the server imitates a mobile device, but rather that it is performing the functions of a mobile device.

In its election, BSD did not withdraw the “concept of ‘off-loading’ processing to a server without requiring emulation.” Resp. at 6. Nothing in the withdrawn claims identifies processing by the server. This is exceedingly clear in Defendants’ example of original Claim 14. *See id.*

Indeed, Defendants are even wrong to point to the patentee’s subsequent language as purported support for their argument that “emulation at the server” (*i.e.*, “imitation”) is necessary. *See* Resp. at 7, quoting Dkt 45-1 at 122. The applicant was distinguishing a prior art reference (Relan) that required multiple streams arriving from multiple applications, as opposed to the Patent, which requires one, *i.e.*, the *same* instance of the mobile device OS, for all streams.

Defendants’ related assertion that “emulating a mobile device” can be read to limit claims 1 and 11 while maintaining claim differentiation of dependent claims 2 and 12 likewise fails. Defendants purport to rely on extrinsic evidence that they suggest establishes that software can be “emulated.” Their evidence does not say that; it says *hardware emulation* can be achieved *through software*, and emulators allow one hardware system to *run the software* of another. Resp. at 8, citing Dkt 54-1 at 307 and 311. There is no reason to “emulate” software, particularly if “emulate” means “imitate,” because software can simply be run on an emulator. Thus, the unclaimed language “emulating a mobile device” in the preamble means the same thing as “emulating mobile device HW” in the body of the dependent claims.

3. If the preamble is limiting, “emulating” cannot mean “imitating.”

Even if the preamble is limiting (it is not), “emulating a mobile device” does not mean “to imitate, *i.e.*, act as if it is a mobile device.” That overly restrictive definition must be rejected because it is inconsistent with the use of “emulated” throughout the specification. *See Merck & Co. v. Teva Pharms. USA, Inc.*, 347 F.3d 1367, 1371 (Fed. Cir. 2003) (“[C]laims must be construed so as to be consistent with the specification, of which they are a part.”).

As discussed, the specification uses “emulate” in relation to many different terms. But if “emulate” means “imitate” or “act as if it is,” it makes no sense for a server to, *e.g.*, “emulate[] a user experience.” *See* 8:22-23. How would a server imitate or act as if it is a user experience? Same for user interface information. *See* 6:63-7:3. In the context of the body of the claims, the preamble is clear that the server receives the input information from the mobile device, the server processes the input information, produces user interface information, and sends the user interface information back to the mobile device for reproduction. Thus, “emulating” in the preamble is, at best, concerned with *performing the functions* at the server as opposed to the mobile device.

B. Term 2: “a Mobile Device Operating System (OS)”

BSD: “an operating system capable of running on a mobile device”

Amazon: “An operating system that is specifically designed to be run on a mobile device (e.g., Google Android, Windows Phone or Mobile, Nokia Symbian, Apple iOS).”

With misquotes and misdirection, Defendants purposefully conflate “mobile device OS,” a term explicitly used in the claims, with “mobile OS” (Resp. at 1, 2, 10-12) in hopes of reducing

the Patent’s scope to mere smartphone OS. But the Patent refutes such a position as it explicitly includes laptops among “mobile devices.” *See* 1:27-28; Fig. 2 (“Mobile Device (Phone/Tablet/Laptop etc.)”). Thus, “mobile device OS” **must** include an OS that can run on laptops.

Next, Defendants argue that a “mobile device OS” is different from “standard [OS] or server [OS]” because “mobile device OS” runs on top of a “normal OS of a server.” Resp. at 10, citing 12:44-45. The problem is that Defendants’ evidence concerns “mobile OS,” not “mobile device OS.” Moreover, stacked OS exclude **nothing**, as *OS frequently run on top of other OS*, *e.g.*, virtual machines operating their OS on cloud servers with their own OS.

Further, Defendants’ conclusory statement that “if ‘mobile device [OS]’ means any [OS] capable of running on a laptop, ‘mobile device [OS]’ simply means ‘[OS],’” (Resp. at 10), is flawed. The mobile device OS capable of running on a laptop would still exclude, for example, OS of high-performance desktop computers and servers that exceed the capabilities of laptops.

Lastly, to avoid the well-known fact that laptops are not constrained to, *e.g.*, iOS and Android, Defendants speculate that “[i]t is possible that laptops are less relevant to the purported solution of the ’887 patent” Resp. at 12. This is a curious statement given that the Patent’s first embodiment (4:43-5:47), illustrated in Figure 2, explicitly depicts “Mobile Devices” as “Phone/Tablet/Laptop etc.” Fig. 2. Defendants also fail to account for “streamers,” (Opening at 8), which are well-known to use a variety of OS, including those not specific to mobile devices.

C. Term 3: “User interface information”

BSD: “Data that can be used to recreate or produce a display (e.g., video and/or image), audio, text, and/or other feedback (e.g., notifications, HW action data) without any processing thereof other than the decoding and playback or reproduction of the user interface information itself by the mobile device”

Amazon: Plain and ordinary meaning

Starting a theme, Defendants assert “user interface information” should be given its plain and ordinary meaning without providing what they consider that meaning to be. *See* Resp. at 13-14. The suggestion that “customary” meaning suffices, (Resp. at 13 quoting *Evolusion Concepts, Inc. v. HOC Events, Inc.*, 22 F.4th 1361, 1366 (Fed. Cir. 2022)), ignores the fact there is no such custom. Defendants cannot cite any standard defining the term or use by relevant authorities.

In contrast, BSD relies on the intrinsic record, which, in discussing an *exemplary* embodiment, states that “user interface information is data that can be used to recreate or

1 produce a display and/or audio without any processing thereof other than the decoding and
 2 playback or reproduction of the user interface information itself by the mobile device 10.” 5:8-
 3 12; *see also* 4:34-44 (“ . . . according to an *example embodiment*.”). Because this is exemplary,
 4 BSD’s construction clarifies that the features are not limited to “a display and/or audio.” Indeed,
 5 the specification is clear that “display” includes video, images, and text. *See, e.g.*, Figs. 4 and 5
 6 (showing decoding of video, images, and text being integrated into display). Moreover, because
 7 the patentee’s definition covers “reproduction of the user interface information *itself* by the
 8 mobile device,” (5:11-12), the other feedback to the mobile device that the Patent identifies as
 9 sent for reproduction, *e.g.*, notifications and hardware action, also should be included. *See* 5:35-
 10 38 (“ . . . user interface information including information for producing a display, audio and
 11 other **feedback**.”); 8:54-59 (“ . . . the user interface data . . . into different data streams including
 12 video, image, audio, notifications and text data streams.”); *see also* Claims 1, 11, and 20.

13 **D. Term 4: “To produce a stream of user interface information . . . based on a
 14 same instance of the mobile device OS” and “instance”**

15 **BSD:** “to produce, based on the same instance of the mobile
 device OS, a stream of user interface information” and
 “occurrence”

Amazon: Plain and
 ordinary meaning

16 The Parties agree “based on a same instance of the mobile device OS” modifies the step
 17 performed at the server and not at the mobile device, (*see* Resp. at 14-15), but moving the phrase
 18 next to what it modifies will “clarify . . . and explain what the patentee covered by the claim.”
 19 *O2 Micro Intern. Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

20 The parties dispute the need to construe “instance,” which in the computer arts is
 21 frequently associated with virtual machines. In fact, the specification uses this term in both a
 22 technical manner (6:11-13, “[T]he ability for multiple different mobile devices 10 to use the
 23 same instance of a virtual machine . . .”), and in a layperson’s understanding of the term (*i.e.*,
 24 occurrence) (3:40-41, “The server processes, by a same instance of a mobile device operating
 25 system (OS) executed by the server...”). *See also* Opening, 14-15. While the parties seem to
 26 agree that the claim language confirms that “instance” pertains to an OS and not a virtual
 27 machine (*See* Resp. at 15), without guidance, the jury may inadvertently import an inappropriate
 28 technical understanding into its deliberations, and for this reason, construction is proper.

E. Term 5: “at least one of the display, the audio and the hardware action”

BSD: “at least one of each of the display, the audio and the hardware (HW) action”	Amazon: Plain and ordinary meaning
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Defendants’ contention that a conjunctive construction “is inconsistent with the specification” because it “would *exclude many exemplary embodiments*,” (Resp. at 15–16), cannot overcome the *SuperGuide Corp. v. DirecTV Enters. Inc.*, 358 F.3d 870 (Fed. Cir. 2004) presumption that “at least one of . . . and” carries a conjunctive meaning. In *SIMO Holdings Inc. v. Hong Kong UCloudlink Network Tech. Ltd.*, the Federal Circuit endorsed the *SuperGuide* presumption for a similar phrase: “a plurality of.” 983 F.3d 1367, 1376–77 (Fed. Cir. 2021). There, the Federal Circuit made clear that the exclusion of exemplary embodiments is insufficient to rebut *SuperGuide* and does not “contradict the specification” where the conjunctive construction “captur[es] one embodiment expressly described.” *Id.* at 1379–80 (cleaned up). Here, a conjunctive construction captures numerous embodiments and thus is wholly consistent with the specification. *See* 2:33–36; 2:43–46; 2:54–57; 2:67–3:3; 3:6–8; 3:44–45; 3:61–63. Thus, Defendants’ reliance on *Power–One, Inc. v. Artesyn Techs., Inc.*, 2007 WL 896093, *14 (E.D. Tex. 2007) and *Firtiva Corp. v. Funimation Global Group, LLC*, 2022 WL 23165, *7–8 (E.D. Tex. 2022) (Resp. at 17) is misplaced. Both Texas cases declined to follow *SuperGuide* because a conjunctive construction would exclude exemplary embodiments. *Power–One*, 2007 WL 896093, at *15; *Firtiva*, 2022 WL 23165, at *7. *SIMO* rejected such reasoning.

Defendants’ reliance on *Fujifilm Corp. v. Motorola Mobility LLC*, No. 12-CV-03587-WHO, 2015 WL 1265009 (N.D. Cal. Mar. 19, 2015) (Resp. at 16–17) is also misguided. They claim *Fujifilm* found the *SuperGuide* presumption rebutted because, like here, the “at least one of” limitation was not comprised of a list of elements with “‘many possible values’ that users must choose ‘at least one of’ for the invention’s purpose to be served.’” *Id.* Not only was this just one of three reasons why *Fujifilm* found *SuperGuide* rebutted but, unlike here, the invention’s purpose was served without requiring the selection of “at least one of” each item in the list. However, it is not necessary for the conjunctive construction to capture every embodiment (*See SIMO*, 358 F.3d at 1379–80). Here, there are many embodiments where the invention’s purpose is served where each of the display, the audio and the hardware (HW) action must be selected.

1 See 2:33-36; 2:43-46; 2:54-57; 2:67-3:3; 3:6-8; 3:44-45; 3:61-63.

2 Additionally, unlike *SuperGuide*, the list following “a plurality of” in *SIMO* did **not**
 3 comprise a list of elements with many possible values. Rather, similar to the disputed term here,
 4 it included types of hardware and data. *SIMO*, 983 F.3d at 1375. Thus, the Federal Circuit has
 5 utilized the *Superguide* presumption even where the items in the list include types of data
 6 without “many possible values,” and Defendants cannot rebut *SuperGuide* solely on that basis.
 7 Reliance on *Dealertrack, Inc. v. Huber*, No. 06-cv-02335, 2008 WL 5792509 (C.D. Cal. 2008)
 8 fails for the same reason, *i.e.*, the lack of “categories with elements that users of the patented
 9 technology could choose” alone is insufficient to rebut *SuperGuide*.

10 Moreover, *Dealertrack* did not follow *SuperGuide* because “it would not make sense”
 11 given that the “grammatical structure” of the claim element was different in that “at least one of”
 12 was followed by a colon and then a list separated by semicolons. *Dealertrack*, 2008 WL
 13 5792509, at *7. Here, the grammar is identical to that in *SuperGuide*, and requiring at least one
 14 of each item in the list makes sense in the context of the claims and is described thoroughly in
 15 the specification. See 2:33-36; 2:43-46; 2:54-57; 2:67-3:3; 3:6-8; 3:44-45; 3:61-63. District
 16 courts have similarly drawn clear boundaries for rebutting *SuperGuide*, rejecting nonsensical
 17 conjunctive constructions. See *Cirba Inc. v. VMware, Inc.*, 2022 WL 608185, at *9 (D. Del.
 18 2022); see also *LMT Mercer Group, Inc. v. Maine Ornamental, LLC*, 2014 WL 183823, at *27
 19 (D.N.J. 2014) (explaining that courts primarily reject the *SuperGuide* presumption where it
 20 would be “nonsensical in the context of the patent at issue”). Because a conjunctive construction
 21 is supported by the specification and does not render the limitation nonsensical, Defendants
 22 cannot rebut the presumption that “at least one of . . . and” has a conjunctive meaning.

23 Finally, Defendants’ claim differentiation argument (Resp. at 17-18) fails to cite to any
 24 actual **patent** claims that could give rise to a presumption that this disputed term employs a
 25 disjunctive meaning. Instead, Defendants cite an **application** claim and rely on *Bd. of Regents of*
 26 *the Univ. of Tex. Sys. v. BENQ Am. Corp.*, 533 F.3d 1362 (Fed. Cir. 2008), which found different
 27 claim terms in an **issued patent** are “presumed to have different meanings.”

28 **F. Term 6: “quality of service / quality of service different from a quality of**

service of another of said separate data streams”

BSD: “Characteristics of a service that bear on its ability to satisfy stated and implied needs of the user of the service” / Plain and ordinary meaning	Amazon: Plain and ordinary meaning / “Prioritizing certain data streams over others in limited bandwidth environments.”
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For strategic purposes, Defendants parry the construction of QoS, and focus on the larger clause, “QoS different from a QoS of another of said separate data streams,” to then implicitly define the embedded QoS term. As a dispute exists, claim construction is proper. *EON Corp IP Holdings LLC v. Apple Inc.*, No. 14-CV-05511-WHO, 2016 WL 5234609, at *12 (N.D. Cal. Sept. 22, 2016) (“When the parties raise an actual dispute regarding the proper scope of [a] claim[], the court . . . must resolve that dispute. . . . [otherwise this] would impermissibly delegate the task of determining claim scope to the jury”).

QOS. Defendants suggest BSD’s construction is divorced from the Patent. Not so. BSD’s construction is fully supported by the specification. QoS is one of several **stream** characteristics. 8:63-9:2 (“Each individual **data stream** has its own characteristics, for example, an encoding method . . . , a quality of service (QoS), a bandwidth etc., which may be different from stream to stream.”). More specifically, QoS may be quantified, such as low, medium and high (9:57-65, describing different stream configurations with “lowest QoS . . . higher QoS . . . high[est] QoS”), and configured in concert with the other stream characteristics that may be mixed and matched to achieve a desired outcome, such that a “video stream may receive H.264 encoding/decoding and a **lowest level QoS**. A voice stream may receive lossless encoding and a **higher level of QoS**. Bandwidth (BW) may be automatically calculated based on a bandwidth required for the type of stream.” 9:47-61. QoS thus is not an “overarching term” covering “the entire list of characteristics” including “bandwidth” and “encoding methods,” (Resp. at 19), but instead is its own stream characteristic that is determined based on **service** characteristics that relate to the user’s needs. Indeed, QoS serves an important role for user experience, as “[e]ach individual stream of data may have a different QoS so that a quality of experience (QoE) is optimal even if BW is lacking.” 9:32-46. Thus, the Patent makes clear that QoS, representing the **service** characteristics (which are distinct from stream characteristics, described above) are user driven, such as latency and skew (10:43-50 (“Because audio and voice streams receive higher QoS than

video streams, and assuming there is enough network BW, a sufficiently **low latency** for audio and voice data is maintained so that **insignificant skew** between video and audio playback occurs. For example, a video latency of 100 ms and an audio latency of 50 ms should not result in a skew . . . *that is noticeable by the user*)), or the ability to traverse high error rate networks (6:15-17 (“function[] on wireless networks having relatively low band-width and **high bit error rate**, the ability to pass in real time and **high quality display graphics motions**))). BSD’s construction, which accounts for the *service* characteristics and user needs, is thus supported by the specification and consistent with industry standards at the time, such as those of the ITU (the applicability of which Defendants do not challenge), which a POSITA would have referenced.

Purporting to disagree with BSD’s construction, instead of offering an alternative, Defendants offer an unsupportable construction of “QoS different from a QoS of another of said separate data streams” as a Trojan horse to sneak “traffic prioritization” into “QoS.”

Prioritization. Defendants’ construction is devoid of any meaningful analysis. Instead, they ask the Court to make a logical leap that “different” QoS levels means the Patent teaches prioritizing certain data streams over others. Resp. at 20 (“certain streams may have a higher QoS (i.e., may be prioritized) to maintain a high-quality experience when bandwidth is ‘lacking.’”). Not only does the Patent never use the words “priority” or “prioritizing”, but Defendants cannot point to a single instance of an analogous stream “prioritization” concept.

Additionally, Defendants criticize BSD’s QoS proposal saying it would render claims 7, 16 and 24 moot because, in their distorted view, the display, audio and hardware action streams of the independent claims “are *always* going to have different ‘characteristics’ that bear on their ability to satisfy needs of a user.” Resp. at 19 (emphasis in original). That is false. The specification contemplates that QoS of a video, audio and hardware action stream may or may not all be the same. *See, e.g.*, 9:40-46 (“Each individual stream of data *may have* a different QoS *so that a quality of experience (QoE) is optimal* even if BW is lacking.). Only dependent claims (7, 16, and 24) add the further explicit limitation of *different* QoS for the streams.

III. CONCLUSION

Plaintiff respectfully requests the Court construe the disputed terms as set forth herein.

1 Dated: May 5, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2025, I caused the service of the foregoing on counsel of record via ECF filing, including on the following:

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