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TWITCH INTERACTIVE, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION
13

14 RAZDOG HOLDINGS LLC,
15 Plaintiff,
16 v.
17 TWITCH INTERACTIVE, INC.,
18 Defendant.
19

Case No. 4:24-CV-03638-HSG

**DEFENDANT TWITCH INTERACTIVE,
INC.'S RESPONSIVE CLAIM
CONSTRUCTION BRIEF**

Date: TBD
Time: 2:00 p.m.
Location: Courtroom 2, 4th Floor
Judge: Hon. Haywood S. Gilliam, Jr.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE ASSERTED PATENTS.....	1
III.	ARGUMENT	3
A.	Term 1: “master server” / “a master server” / “a cloud-based master server” ('658 patent, claims 1, 5, 7, 8, 9, 12, 18; '068 patent, claim 1)	3
1.	RazDog ignores the specification.....	4
2.	RazDog’s citations to the specification do not dictate a different result.	7
B.	Term 2: “content data” ('658 patent, claims 1, 5, 7, 9, 12; '068 patent, claim 1)	7
C.	Term 3: “real time” ('658 patents, claims 1, 7, 12; '068 patents, claim 1).....	10
1.	RazDog’s reliance on a construction from another case is improper.....	10
2.	RazDog fails to demonstrate a construction of “real time” is necessary or helpful, or that its construction is appropriate.....	11
3.	The arguments from the IPRs further reinforces “real time” should be given its plain and ordinary meaning.	13
IV.	CONCLUSION	14

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>01 Communique Lab'y, Inc. v. LogMeIn, Inc.</i> , 687 F.3d 1292 (Fed. Cir. 2012).....	4
<i>Abbott Labs. v. Dey, L.P.</i> , 287 F.3d 1097 (Fed. Cir. 2002).....	10
<i>Allen Eng'g Corp. v. Bartell Indus., Inc.</i> , 299 F.3d 1336 (Fed. Cir. 2002).....	8
<i>Baldwin Graphic Sys., Inc., v. Siebert, Inc.</i> , 512 F. 3d. 1338 (Fed. Cir. 2008).....	4
<i>BSD Crown, Ltd. v. Amazon.com, Inc.</i> , No. 3:23-CV-00057-WHO, 2024 WL 1120979 (N.D. Cal. Mar. 14, 2024).....	11
<i>Chef Am., Inc. v. Lamb-Weston, Inc.</i> , 358 F.3d 1371 (Fed. Cir. 2004).....	8
<i>Curtiss-Wright Flow Control Corp. v. Velan, Inc.</i> , 438 F.3d 1374 (Fed. Cir. 2006).....	5
<i>Depomed, Inc. v. Ivax Corp.</i> , 532 F. Supp. 2d 1170 (N.D. Cal. 2007)	5
<i>Digital-Vending Servs. Int'l, LLC v. Univ. of Phoenix, Inc.</i> , 672 F.3d 1270 (Fed. Cir. 2012).....	9
<i>Elekta Instrument S.A. v. O.U.R. Scientific Int'l, Inc.</i> , 214 F.3d 1302 (Fed. Cir. 2000).....	8
<i>Emblaze Ltd. v. Apple Inc.</i> , No. 5:11-cv-01079-PSG, 2015 WL 396010 (N.D. Cal. Jan. 29, 2015), <i>aff'd</i> , 639 F. App'x 639 (Fed. Cir. 2016)	10, 11
<i>Eon Corp. IP Holdings v. Silver Spring Networks, Inc.</i> , 815 F.3d 1314 (Fed. Cir. 2016).....	10
<i>Goldenberg v. Cytogen, Inc.</i> , 373 F.3d 1158 (Fed. Cir. 2004).....	10, 11
<i>Harari v. Lee</i> , 656 F.3d 1331 (Fed. Cir. 2011).....	4
<i>Nystrom v. TREX Co., Inc.</i> , 424 F.3d 1136 (Fed. Cir. 2005).....	5

1	<i>Phillips v. AWH Corp.</i> ,	
2	415 F.3d 1303 (Fed. Cir. 2005).....	10, 13
3	<i>Process Control Corp. v. HydReclaim Corp.</i> ,	
4	190 F.3d 1350 (Fed. Cir. 1999).....	8
5	<i>Rehco LLC v. Spin Master, Ltd.</i> ,	
6	759 F. App'x 944 (Fed. Cir. 2019)	4
7	<i>SimpleAir, Inc. v. Sony Ericsson Mobile Commc'ns AB</i> ,	
8	820 F.3d 419 (Fed. Cir. 2016).....	9
9	<i>Tex. Digital Sys., Inc. v. Telegenix, Inc.</i> ,	
10	308 F.3d 1193 (Fed. Cir. 2002) (abrogated on other grounds)	10, 11
11	<i>Thorner v. Sony Computer Ent. Am. LLC</i> ,	
12	669 F.3d 1362 (Fed. Cir. 2012).....	3, 8, 10
13	<i>VLSI Tech. LLC v. Intel Corp.</i> ,	
14	53 F.4th 646 (Fed. Cir. 2022).....	9

I. INTRODUCTION

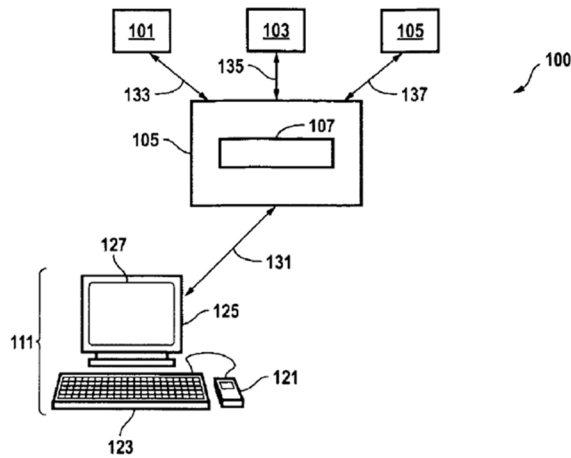
U.S. Patent Nos. 9,729,658 and 10,334,068 (the “’658 and ’068 patents,” respectively) (collectively, the “Asserted Patents”) are directed to the concept of aggregating content data and/or content applications from different sources, organizing it, and displaying it on a remote device. Through its proposed constructions, RazDog seeks to alter the definition of two terms where the applicant acted as a lexicographer—“master server” and “content data.” In doing so, RazDog disregards the claim language, the specification, and the applicant’s clear intent in defining the scope of the invention. RazDog’s attempt to enlarge the claim scope beyond what was contemplated or can be supported by the specification should be rejected.

RazDog further asks the Court to construe the term “real time.” But this term should be given its plain and ordinary meaning as this term is readily understandable in the context of the claims and the patent. RazDog’s proposal is confusing, imported from an unrelated context, and unsupported by the specification. As a result, rather than providing clarification, RazDog’s proposed construction muddies the waters. The Court should not unnecessarily construe a term where the construction does not assist the factfinder.

II. OVERVIEW OF THE ASSERTED PATENTS

The Asserted Patents share a common specification and generally relate to “a cloud-based computing and architecture for managing the content data and/or services from multiple sources through a single user interface in real time.” ’658 patent, 1:59-62; ’068 patent, 1:67-2:3. The Asserted Patents acknowledge that “[m]ost cloud-based computing systems and architectures include a master server that networks to other service provider servers and streams content data to the master server that is then accessed through the remote computing device.” ’658 patent, 1:47-50; ’068 patent, 1:55-58. The alleged problem with prior-art systems, however, was that they required multiple logins to access cloud-based content from multiple sources. ’658 patent, 1:53-58; ’068 patent, 1:59-61. The Asserted Patents purportedly solve this problem by providing a “single user interface” that allows a user to access, manage, and migrate through content from various sources. ’658 patent, 1:58-62, 2:30-34; ’068 patent, 1:62-66, 2:32-37.

Figure 1 shows the architecture of the disclosed cloud-based computer system.



Asserted Patents, Fig. 1.

“[C]ontent data sources or service provider servers 101, 103, and 105 are in communication or linked to . . . master server 105.”¹ ’658 patent, 4:41-46; ’068 patent, 4:52-57. Content is aggregated and organized by master application 107 and accessed by a user using a remote computing device, such as desktop computer with a monitor or display. ’658 patent, 4:50-67; ’068 patent, 4:16-18. The architecture includes the well-understood concept of a “master web-page” viewed from the remote computing device and enabling the user to “scroll or page through the content data and/or content applications from the multiple content data sources or service providers in real time.” ’658 patent, Abstract; ’068 patent, Abstract. The master web-page features a well-known “icon-based” design that allows users to interact with multiple content sources simultaneously. ’658 patent, 2:38-42; ’068 patent, 2:46-50. A “slide tool” incorporated into this interface “allows a user to scroll or page through the content data and/or content applications.” ’658 patent, 2:60-64; ’068 patent, 3:1-5.

¹ The Asserted Patents use reference designator 105 for both a service provider server and the master server.

III. ARGUMENT

A. Term 1: “master server” / “a master server” / “a cloud-based master server” (’658 patent, claims 1, 5, 7, 8, 9, 12, 18; ’068 patent, claim 1)

RazDog’s Proposed Construction	Twitch’s Proposed Construction
“One or more dedicated servers for supporting a master program and user interface to access and view content data and applications from multiple content data sources or providers through a single user interface”	“a dedicated server for supporting a master program and user interface to access and view content data and applications from multiple content data sources or providers through a single user interface”

The Parties agree that the applicant acted as a lexicographer and defined the term “master server” in the specification. ’658 patent, 3:65-67, 7-10; ’068 patent, 4:10-12, 19-22 (“To facilitate the clarity of the ensuing description, words and phrases listed below have been ascribed the following meanings: . . . A log-in server or **master server is a dedicated server for supporting a master program and user interface to access and view content data and applications from multiple content data sources or providers through a single user interface.**”);² *Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (explaining applicant acts as lexicographer when it clearly sets forth definition of term in specification). Twitch’s proposal is verbatim the definition in the specification. RazDog replaces “a” with “one or more” to expand “a dedicated server” to “one or more dedicated servers.”

That the applicant acted as a lexicographer and defined the term “master server” should end the inquiry. The applicant’s definition should be adopted. RazDog, however, attempts to apply a canon of claim construction used to interpret the indefinite article “a” used in claim limitations to this definition. It ignores Federal Circuit precedent holding that where the claims and specification demonstrate a contrast between a singular element and a plural element, as they do here, (e.g., “a” master server and “multiple” content sources), it is appropriate to construe “a” to mean “one and only one.” It also ignores that the specification **exclusively** discusses “a” master server in the singular, and that the concept of a “single point” combining multiple inputs is pervasively emphasized as core to the very purpose of the alleged invention. The language here is precisely like language for which the Federal Circuit has expressly rejected RazDog’s argument—even in a case

² All emphases are added unless otherwise stated.

1 in which there was no lexicography, unlike here—and RazDog’s arguments should be rejected for
2 the same reasons.

3 **1. RazDog ignores the specification.**

4 RazDog relies heavily on *Baldwin* and opinions citing it for the “general rule” that “a”
5 means “one or more.” *See, e.g.,* Op. Br. at 8 (citing *01 Communique Lab’y, Inc. v. LogMeIn, Inc.*,
6 687 F.3d 1292, 1297 (Fed. Cir. 2012) (which itself cites *Baldwin Graphic Sys., Inc., v. Siebert, Inc.*,
7 512 F. 3d. 1338, 1342 (Fed. Cir. 2008)) and *Rehco LLC v. Spin Master, Ltd.*, 759 F. App’x 944,
8 949-950 (Fed. Cir. 2019) (quoting *Baldwin*)). It ignores that the Federal Circuit has also stated:
9 “*Baldwin*, however, does not set a hard and fast rule that ‘a’ always means one or more than one.
10 Instead, we read the limitation in light of the claim and specification to discern its meaning. When
11 the claim language and specification indicate that ‘a’ means one and only one, it is appropriate to
12 construe it as such even in the context of an open-ended ‘comprising’ claims.” *Harari v. Lee*, 656
13 F.3d 1331, 1341 (Fed. Cir. 2011).

14 The *Harari* opinion is strikingly instructive here. In that case, the claims recited using “a
15 bit line” to activate “a number of memory cells.” *Id.* The court noted the claims “reinforce[d] the
16 difference between singular and plural,” for example by referring back to “said” bit line and “said
17 number of” memory cells. *See id.* Accordingly, the court concluded that “the correct and only
18 reasonable construction of the claim terms” was that “a” bit line meant “a single bit line.” *Id.* at
19 1342.

20 The same is true of the claims of the Asserted Patents. The Asserted Patents claim (through
21 system claims, in both patents, and method claims, in the ’658 patent) what a master server does
22 with a consistent singular vs. plural contrast, just as in *Harari*. “The” master server includes
23 software for organizing data from “multiple” content sources or service providers, in element b) of
24 claim 1 of both patents. It includes a program for scrolling through the data or applications from
25 those “multiple” content sources or service providers, in the same element. The other two
26 independent claims of the ’658 patent emphasize this same distinction. In claim 7, “a” master server
27 has an application with a feature for paging through data or applications from “multiple” data
28 sources or service providers. In claim 12, there is a method for navigating data or applications from

1 “multiple” servers of “multiple” content sources through “a” master web-page on “a” cloud-based
 2 master server. Just as in *Harari*, where “a” bit line was contrasted with “a number of” memory
 3 cells, all of the asserted claims contrast “a” master server with “multiple” content sources or service
 4 providers.

5 The specification and prosecution history expand on this and further elucidate why the
 6 claims are so consistent: the very nature of the invention is having a **singular** master server as a
 7 “single” point of access that aggregates and serves content. *See, e.g.*, Asserted Patents at Abstract
 8 (“a log-in or master server that acts as a **single** point access.”); ’658 patent, 2:35-37 (same), 4:38-
 9 40 (“The cloud-based computer system and architecture includes a log-in server or master server
 10 that acts as a **single** point of access for a plurality of content data sources”); Declaration of Robin
 11 L. Brewer in Support of Defendant’s Responsive Claim Construction Brief (“Brewer Decl.”), Ex.
 12 1 (Amendment and Response to Office Action) at 7 (“A second part of the invention is an
 13 application that is executed from a master server, which acts ‘somewhat’ as an aggregator in the
 14 sense that it directs live stream web sources or content providers to a **single** user interface or page
 15 simultaneously....the aggregator software that is executed from the master server to receive
 16 multiple simultaneous live streamed web sources or content providers [is] required to make this
 17 invention work.”); *see also Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1144-45 (Fed. Cir. 2005)
 18 (“[Plaintiff] is not entitled to a claim construction divorced from the context of the written
 19 description and prosecution history”); *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d
 20 1374, 1379-80 (Fed. Cir. 2006) (limiting term based on context in specification); *Depomed, Inc. v.*
 21 *Ivax Corp.*, 532 F. Supp. 2d 1170, 1180 (N.D. Cal. 2007) (same).

22 This contrast between **multiple** content sources and a **single** location in which they can be
 23 aggregated and accessed (i.e., a master server) is emphasized throughout the specification and
 24 integral to the purpose of the claimed invention. Beginning with the Abstract, the specification
 25 describes “a log-in or master server that acts as a **single** point [of] access.” ’658 patent, Abstract,
 26 1:28-35; ’068 patent, Abstract, 1:36-43. The Field of Invention similarly describes the invention
 27 through this lens of a “single point of access,” stating: “[T]he present invention relates to computer
 28 systems for managing . . . multiple content data sources through a **single point of access.**” ’658

1 patent, 1:30-34; '068 patent, 1:38-42. The specification continues by consistently highlighting this
 2 concept. *See* '658 patent, 2:34-37 (“master server that acts as a single point [of] access”), 2:47-56,
 3 3:56-60 (“FIGS. 3A-B show[] block-flow diagrams outlining steps for managing the content data
 4 or applications . . . through a single point of access and user interface”); '068 patent, 1:36-43, 2:42-
 5 45, 2:55-64, 4:1-5 (same); *see also* '658 patent, 1:30-35 (“the present invention is directed to a
 6 cloud-based computing system and architecture for managing the content data and/or services from
 7 multiple sources through a single user interface in real time.”); '068 patent, 1:38-43 (same). The
 8 specification further uses this single location as a way to distinguish the invention from the prior
 9 art that required accessing multiple sources. '658 patent, 1:53-58 (“currently available computing
 10 systems require[] multiple log-in procedures for accessing the multiple sources of content data
 11 and/or services and/or do not provide for the ability to manage the content data and/or services from
 12 multiple sources through a single user interface”); '068 patent, 1:62-66 (same).

13 Figure 1 further supports the “master server” being a single “dedicated server.” Figure 1
 14 illustrates “[t]he cloud-based computer system and architecture 100 includes a log-in server or
 15 **master server 105 that acts a single point of access** for a plurality of content data sources or
 16 service provider servers 101, 103, and 105.” '658 patent, 4:35-46, Fig. 1; '068 patent, 4:46-57,
 17 Fig. 1.

18 Similarly, in the prosecution history, the applicant identified aggregator software on the
 19 master server as required for the invention to work. Brewer Decl., Ex. 1 at 7. The applicant
 20 describes the aggregator software as “receiv[ing] multiple simultaneous live streamed web sources
 21 or content providers” and “direct[ing] live stream web sources or content providers to a **single** user
 22 interface or page simultaneously.” *Id.*

23 Nothing in the specification or prosecution history discloses anything other than a single
 24 master server providing a single user interface. The specification does not explain (nor does
 25 RazDog, in its briefing) how the actions performed by the master server could or should be
 26 distributed to multiple servers. Nor would it have made any sense for the patentee to do so. This
 27 “single point of access” provided by the master server is what purportedly makes the system unique.

1 **2. RazDog’s citations to the specification do not dictate a different result.**

2 RazDog can cite nothing in the specification to the contrary. There is not a single instance
3 of multiple dedicated servers as opposed to one master server. Instead, RazDog cites the use of “a”
4 before “master server” in the specification, arguing that this supports its argument that “a” means
5 “one or more.” *See, e.g.,* Op. Br. at 10. But this is entirely circular. The references to “a” master
6 server in the specification only mean “one or more” if RazDog’s construction is **correct**. On the
7 contrary, if “a master server” means “**a** master server,” none of these citations support RazDog’s
8 argument—they contradict it. And RazDog has no support for applying a canon of claim
9 construction, which is directed to how to interpret words in claim limitations, should also limit and
10 modify the words in an express definition set out in the specification.

11 RazDog’s cited cases are similarly inapposite. *Id.* at 8. Not one of the opinions it cites
12 addresses a patent in which the claims and specification emphasize singularity vs. plurality. Nor do
13 any involve modifying a definition in the specification of the term to be construed. They stand only
14 for the non-controversial proposition that, in cases absent these critical facts, when “a” appears in
15 a claim limitation, it may mean “one or more.” That is not instructive here, and does not contradict
16 the more applicable analysis seen in *Harari*.

17 Twitch requests that the Court find that “master server” should be construed as it is defined
18 in the specification, consistent with the repeated distinction of “a” single point of access
19 aggregating information from “multiple” sources: “a dedicated server for supporting a master
20 program and user interface to access and view content data and applications from multiple content
21 data sources or providers through a single user interface.”

22 **B. Term 2: “content data” (’658 patent, claims 1, 5, 7, 9, 12; ’068 patent, claim 1)**

RazDog’s Proposed Construction	Twitch’s Proposed Construction
“any data or information that is stored remotely on servers that are generally accessible over the internet/intranet”	“any data or information that is stored remotely on servers that are generally accessible over the internet/intranet via a service provider servers”

26 The Parties also agree that the term “content data” is defined in the specification. ’658
27 patent, 3:65-4:3 (“To facilitate the clarity of the ensuing description, words and phrases listed below
28 have been ascribed the following meanings: Content data is **any data or information that is stored**

1 remotely on servers that are generally accessible over the internet/intranet via a service
 2 provider servers.”); ’068 patent, 4:1-15 (same); *Thorner*, 669 F.3d at 1365 (explaining applicant
 3 may act as lexicographer). Yet again, Twitch proposes a construction that is verbatim the definition
 4 in the specification, but RazDog seeks to modify that definition. For this term, RazDog seeks to
 5 delete “via a service provider servers” from the end of the definition.

6 RazDog argues that the complete definition “contradicts the clear claim language and would
 7 render the Asserted Claim indefinite” because, it asserts, the claims contemplate that content data
 8 can come from more than just service providers, and that would contradict this definition.³ Op. Br.
 9 at 11. But RazDog manufactures this problem by omitting part of the relevant claim language. The
 10 claim language requires: “software coded for organizing content data **and content applications**
 11 from multiple content sources or service providers.” Asserted Patents, cl. 1. RazDog ignores “and
 12 content applications,” and that omitted text is critical to a correct reading of this claim. It is the
 13 combination of “content data” **AND** “content applications” that come from “content sources” **OR**
 14 “service providers.” The claim language does not require content data to come from content
 15 sources, as opposed to service providers—content applications may come from content sources.
 16 The specification confirms as much. *See* ’658 patent, 4:4-6 (“Content applications are software
 17 applications that accesses display and organized content data, **generally from a web-sites.**” [sic]);
 18 ’068 patent, 4:16-18. Having content data come exclusively from service providers, as the
 19 definition in the specification explicitly states, does not contradict the claim language and does not
 20 render the claim indefinite. RazDog’s citations to the specification are irrelevant for the same
 21 reason. Op. Br. at 13. Every instance of “content data” that RazDog cites includes “and/or content
 22 applications” immediately after; yet RazDog again concentrates only on “content data” and reads

23
 24 ³ Even were RazDog correct that the patentee’s complete definition would render its claim
 25 indefinite, that would not justify revising the definition. It is “settled practice [to] construe the claim
 26 as written, not as the patentees wish they had written it.” *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358
 27 F.3d 1371, 1374 (Fed. Cir. 2004). In circumstances where the proper construction renders the claim
 28 invalid, the proper construction should still be adopted and the claim invalidated. *Id.* (citing *Process
 Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357 (Fed. Cir. 1999)); *see also Allen Eng’g
 Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002) (declining to reinterpret claims
 to find them valid); *Elekta Instrument S.A. v. O.U.R. Scientific Int’l, Inc.*, 214 F.3d 1302, 1308–09
 (Fed. Cir. 2000) (rejecting argument construction should not be adopted because it would render
 claim invalid).

1 out “content applications.”

2 The same omission of relevant claim language is responsible for RazDog’s second
 3 argument—that including “via a service provider servers” in the definition is superfluous because
 4 the claim language already includes that content data may come from service providers. *Id.* at 12.
 5 The full phrase, which encompasses both content data and content applications, demonstrates that
 6 including “via a service provider servers” in the definition of content data does not render that
 7 language superfluous. The definition specifies that content data comes from service providers while
 8 the claim specifies that content applications may come from either content sources or service
 9 providers. As RazDog’s arguments are premised on a problem of its own creation through selective
 10 omission of relevant claim language, the case cited by RazDog regarding a construction that renders
 11 claim language superfluous is inapposite. *Id.* (citing *Digital-Vending Servs. Int’l, LLC v. Univ. of*
 12 *Phoenix, Inc.*, 672 F.3d 1270, 1276 (Fed. Cir. 2012) (declining to adopt construction that included
 13 inherent limitation that was same scope as claim language and would render claim language
 14 superfluous)). The issue here is not a question of incorporating an inherent limitation into a claim
 15 construction nor does adopting the full definition render the language superfluous for the reasons
 16 stated above.⁴

17 RazDog further argues that “**generally** accessible over the internet/intranet via a service
 18 provider servers” means that content data “is usually accessible in that manner—not that it is
 19 required to come from service provider servers.” Op. Br. at 12. “Generally” refers to something
 20 being “generally accessible,” however; it is not a modifier for the entire phrase. A later definition
 21 similarly refers to the tool-box as being “generally accessible through an administrator account or
 22 password.” ’658 patent, 4:17-18. Regardless, RazDog’s argument about how to parse the definition
 23 does not justify ignoring or modifying the clear definition in the specification.

24 Twitch requests that the Court find that “content data” should be construed consistent with
 25 the definition in the specification as “any data or information that is stored remotely on servers that

26 ⁴ And even if RazDog were correct, “[w]hile a construction that introduces redundancy into
 27 a claim is disfavored, it is not foreclosed.” *VLSI Tech. LLC v. Intel Corp.*, 53 F.4th 646, 653 (Fed.
 28 Cir. 2022) (citing *SimpleAir, Inc. v. Sony Ericsson Mobile Commc’ns AB*, 820 F.3d 419, 429 (Fed.
 Cir. 2016)). “That is particularly true where, as in this case, intrinsic evidence makes it clear that
 the “redundant” construction is correct.” *Id.*

are generally accessible over the internet/intranet via a service provider servers.”

C. Term 3: “real time” (’658 patents, claims 1, 7, 12; ’068 patents, claim 1)

RazDog’s Proposed Construction	Twitch’s Proposed Construction
“matching the human perception of time or proceeding at approximately the same rate as a physical or external process”	Plain and ordinary meaning

In contrast with the preceding terms, “real time” is not defined in the specification of the Asserted Patents. Nothing in the specification indicates an intent by patentee to narrow or define this term. The plain and ordinary meaning of this term, “[t]ethered to the context of the invention in this case,” should control. *Eon Corp. IP Holdings v. Silver Spring Networks, Inc.*, 815 F.3d 1314, 1321 (Fed. Cir. 2016); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (“In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.”); *Thorner*, 669 F.3d at 1365 (“The words of a claim are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art when read in the context of the specification and prosecution history.”) (internal citations omitted).

1. RazDog’s reliance on a construction from another case is improper.

Rather than relying on the claims and specification in *this* patent, as it should, RazDog attempts to import a definition of “real time” from an unrelated case, construing a different term (“real time broadcasting”) from an unrelated patent. Op. Br. at 19 (citing *Emblaze Ltd. v. Apple Inc.*, No. 5:11-cv-01079-PSG, 2015 WL 396010 (N.D. Cal. Jan. 29, 2015), *aff’d*, 639 F. App’x 639 (Fed. Cir. 2016)). It is axiomatic that claim construction is case- and patent-specific. *See, e.g., Goldenberg v. Cytogen, Inc.*, 373 F.3d 1158, 1167 (Fed. Cir. 2004) (explaining Federal Circuit will not consider unrelated patent in determining claim construction and there are only narrow circumstances where it may consider related patent); *Abbott Labs. v. Dey, L.P.*, 287 F.3d 1097, 1104 (Fed. Cir. 2002) (relationship between two unrelated patents, including common subject matter, inventor, and same assignee, was “insufficient to render particular arguments made during prosecution of [one of the patents] equally applicable to the claims of [the other patent]”); *Tex.*

1 *Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1211 (Fed. Cir. 2002) (abrogated on other
 2 grounds) (explaining that unrelated patent “sheds no light” on claims in patent at issue). An
 3 interpretation of a claim term in one case may be different from the interpretation of that same term
 4 in another case, especially where the fields of technology are different. *Goldenberg*, 373 F.3d at
 5 1167.

6 RazDog’s reliance on the construction from another case is especially inappropriate because
 7 that case involved different technology **and** a different term: “real-time **broadcasting**.” *Emblaze*
 8 *Ltd.*, 2015 WL 396010; *see also BSD Crown, Ltd. v. Amazon.com, Inc.*, No. 3:23-CV-00057-WHO,
 9 2024 WL 1120979, at *4 (N.D. Cal. Mar. 14, 2024). The Asserted Patents here do not deal with
 10 “real-time broadcasting” at all. They deal with delivery of content data, including social media and
 11 email, and viewing aggregated content data and content applications with a scrolling tool. *See, e.g.*,
 12 ’658 patent, cls. 2-3. RazDog is unable to explain how the portion of its construction related to
 13 “matching the human perception of time” can apply in the context of content expressly described
 14 in the Asserted Patents, including social media and email, which are updated but not streamed live.

15 Even RazDog acknowledges the construction from the *Emblaze* case does not apply to the
 16 claims of the Asserted Patents because it modifies the construction by adding “approximately.” Op.
 17 Br. at 18. RazDog claims this is to “clarify for the jury that this construction does not require
 18 **instantaneous** transmission.” *Id.* (emphasis in original). RazDog does not explain how the addition
 19 of “approximately” provides this clarification. *Id.* If anything, this addition introduces greater
 20 ambiguity and suggests that RazDog intends to further construe its proposed construction when
 21 presenting it to the jury.

22 **2. RazDog fails to demonstrate a construction of “real time” is necessary** 23 **or helpful, or that its construction is appropriate.**

24 RazDog accuses Twitch of “fail[ing] to explain the scope of this technical term” (Op. Br. at
 25 13-14), but no such explanation is necessary in the context of the Asserted Patents in this case.
 26 RazDog itself succinctly summarizes the requirements for real time from the claims in its Opening
 27 Brief. *Id.* at 14. RazDog identifies two instances where real time is required: (1) when the content
 28 is streamed to the master server in real time; and (2) when a user scrolls or pages through the content

1 on the master webpage in real time. *Id.* RazDog fails to explain why a construction of “real time”
 2 is necessary or helpful to the factfinder given this clear identification of the asserted claims’ real
 3 time requirements.

4 Rather, RazDog seeks to introduce a third requirement related to real time into the claims—
 5 that the content data must be delivered from the master server to the remote computer in real time.
 6 *Id.* at 14-15 (“As such, a POSITA reading these elements together **would understand the claims**
 7 **to require that content** from multiple sources or providers **must be delivered and displayed**
 8 **concurrently, with minimal delay or latency.**”). RazDog provides no evidence from an expert to
 9 support what a POSITA would understand or the basis for that understanding. *Id.*

10 RazDog further suggests that scrolling in real time requires real time content delivery. *Id.*
 11 at 15-17. It claims that the prosecution history supports its position that the claims require real time
 12 delivery and display of content, but the patentee’s arguments focus on the scrolling tool and master
 13 server. *Id.* at 17. RazDog introduces the requirement of real time content delivery to justify its
 14 construction, and argue that content must be sent such that it matches the human perception of time.
 15 *Id.* at 15, 16, 18. RazDog’s argument is based entirely on a streaming content paradigm and a
 16 mistaken premise that content data is exclusively live streaming or streaming data. *Id.* at 16-18. But
 17 the claims and the invention are not so limited. The claims and specification recite that “content
 18 data” includes social media and email. *See, e.g.*, ’658 patent, 2:40-46, 5:31-36, 7:14-19, 8:3-5, cls.
 19 2-3, 11; ’068 patent, 2:48-54, 5:42-47. Because social media and email are not continuously sent
 20 from their respective service providers, RazDog’s proposed construction makes no sense. These
 21 types of content data are only available sporadically. Thus, “real time” in the context of the Asserted
 22 Patents includes data that is sent to the master server when it becomes available.

23 Additionally, arguing that the claims require “real time” and identifying portions of the
 24 specification stating that something must happen in “real time” does not show why RazDog’s
 25 definition of “real time,” is correct, or why plain meaning is not sufficient. Op. Br. at 15-16.
 26 RazDog’s other cites to the intrinsic evidence describing the master web-page as “dynamic” and
 27 that it “provides the user with an ‘interactive experience’” similarly do not explain how a POSITA
 28 would have understood “real time” in the context of the Asserted Patents or support its construction.

1 *Id.* at 16.

2 Without intrinsic evidence to drive its desired result, RazDog turns instead to extrinsic
 3 evidence. *Id.* at 18. But extrinsic evidence is secondary to intrinsic evidence and must be evaluated
 4 in the context of that intrinsic evidence. *Phillips*, 415 F.3d at 1317 (stating that extrinsic evidence
 5 is “less reliable” than intrinsic, and that “it is unlikely to result in a reliable interpretation of patent
 6 claim scope unless considered in the context of the intrinsic evidence.”). The dictionary definition
 7 that RazDog cites defines “real-time” as “[o]f, or relating to, a time frame imposed by external
 8 constraints.” Brewer Decl., Ex. 2. The dictionary then goes on to provide the example that “[r]eal-
 9 time operations are those in which a machine’s activity match the human perception of time or
 10 those in which computer operations proceed at the same rate as a physical or external process.” *Id.*
 11 But this definition and example do not apply in the context of the Asserted Patents. The time frame
 12 imposed by email systems is different than the time frame imposed by video streaming. Such a
 13 rigid definition of “real time” is unwarranted here. Moreover, the portion related to “matching the
 14 human perception of time” does not make sense when applied in the context of the Asserted Patents,
 15 where content data includes social media or email. RazDog also does not address, and it is not clear,
 16 how “proceed[ing] at the same rate as a physical or external process” would apply to the invention
 17 or asserted claims. Finally, as addressed above, RazDog modifies this definition by adding
 18 “approximately” to it (Op. Br. at 18), introducing greater ambiguity.

19 **3. The arguments from the IPRs further reinforce “real time” should be**
 20 **given its plain and ordinary meaning.**

21 RazDog also takes issue with Twitch’s understanding of “real time” set forth in Twitch’s
 22 IPR petitions.⁵ Op. Br. at 14. RazDog claims that “Twitch advanced an interpretation of ‘real time’

23 ⁵ Twitch filed two petitions for IPR, one for each of the Asserted Patents—IPR2025-00307 (for the
 24 ’658 patent) and IPR2025-00308 (for the ’068 patent). In those IPRs, Twitch explained that
 25 “[a]lthough the ’658 Patent does not define the term ‘real time,’ POSITAs would have understood
 26 it in the context of the intrinsic record to include content from more than one source that is sent to
 27 the server as it becomes available. Any argument by PO that a ‘stream’ of real-time content requires
 28 ongoing, continuous data transmission is inconsistent with the patent. For example, claims 3 and
 11 recite ‘the personal content account is an email account,’ and claim 2—from which claim 3
 depends—additionally recites that the ‘content sources or service providers include...social
 media....’ ’658 Pat., 2:40-46, 5:31-36, 7:14-19, 8:3-5. POSITAs would have known email and
 social media update when new content is available.” Dkt. No. 63-2 at 27 n.9 (citations to expert
 declaration omitted); Op. Br., Ex. 1.

1 that eviscerates the patents’ fundamental objective of an interactive and dynamic real time user
 2 experience.” *Id.* But RazDog never explains how or why the plain and ordinary meaning of “real
 3 time,” including “content from more than one source that is sent to the server as it becomes
 4 available,” supposedly “eviscerates . . . a ‘real time’ user experience.”⁶ RazDog even acknowledges
 5 that “real time” merely requires “minimal delay or latency” (*id.* at 14-15), which is consistent with
 6 Twitch’s position taken in the IPR, requiring content to be sent as it becomes available.

7 Notably, in its responses to those petitions for IPR, RazDog takes the position that “the
 8 Board need **not** provide an explicit construction of the term ‘real time’” for purposes of determining
 9 institution. Brewer Decl., Ex. 3 at 15-21, Ex. 4 at 15-22. RazDog’s argument in its Patent Owner
 10 Preliminary Responses is purportedly premised on the plain language of the claims and the intrinsic
 11 evidence rather than any explicit construction of the term “real time.” *Id.* (arguing intrinsic record
 12 requires content to be delivered to remote computer in real time and reiterating there is no need for
 13 explicit construction of real time). RazDog’s approach reinforces that this term is understood in the
 14 context of the claims and specification without requiring an explicit construction.

15 RazDog’s construction should be rejected, as it introduces ambiguity and confusion, and
 16 does not assist the factfinder. The Court should adopt plain and ordinary meaning for “real time.”

17 **IV. CONCLUSION**

18 Twitch respectfully requests that the Court construe the disputed claim terms as proposed
 19 by Twitch above.

25 ⁶ This explanation regarding what “real time” included was in reference to the limitation “and
 26 streamed to the master server simultaneously in real time from their respective servers on a master
 27 web-page and are viewable from the remote computer devices through the master server on the
 28 master web-page,” designated as limitation 1[b2] in IPR2025-00308. Accordingly, reference is
 made to the content being sent to the server. Regardless of whether the content is sent to the server
 or a user scrolls or pages through the content on the master webpage in real time, the actions happen
 “as the content becomes available.”

1 Dated: May 19, 2025

PERKINS COIE LLP

2
3 By: /s/ Robin L. Brewer

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4 Attorneys for Defendant
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