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page]*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SANDPIPER CDN, LLC,
Plaintiff,
vs.
GOOGLE LLC,
Defendant.

Case No. 2:24-cv-03951-AB (RAO)

**JOINT CLAIM CONSTRUCTION
AND PREHEARING STATEMENT
[PATENT LOCAL RULE 4-3]**

Hearing: September 12, 2025, 10:30 am
Courtroom: 7B

Judge: Hon. André Birotte Jr.

Plaintiff Sandpiper CDN, LLC (“Sandpiper”) and Defendant Google LLC (“Google”) respectfully submit this Joint Claim Construction Statement in anticipation of the claim construction hearing scheduled for September 12, 2025. Consistent with N.D. Cal. Patent Local Rule 4-2(c), the parties met and conferred on June 17, 2025. The parties reserve their rights to supplement, modify, and/or amend these proposed constructions or rebuttal to same.

I. Agreed Constructions (Patent L.R. 4-3(a))

The parties have not agreed to the construction of any proposed terms. The parties will inform the Court in the event that they reach agreement on any terms in advance of the Claim Construction Hearing.

II. Proposed Constructions of Disputed Terms (Patent L.R. 4-3(b)-(c))

The parties dispute the meaning of the four terms listed below from two asserted patents, U.S. Patent No. 9,021,112 (the “’112 patent”) and U.S. Patent No. 10,924,573 (the “’573 patent”).

Supporting evidence for the parties’ claim constructions is provided in Attachment A. The parties reserve the right to rely upon all evidence cited or referenced by the opposing side relating to disputed terms. The parties further reserve the right to cite additional supporting evidence in response to the upcoming claim construction briefing.

Term	Claim Term	Asserted Claim(s)	Sandpiper’s Construction	Google’s Construction
1	“attempting to serve said second content from the second content server”	’112 patent, claim 13 and all claims dependent therefrom	“attempting to serve said first content from the second content server” Not indefinite	Indefinite

Term	Claim Term	Asserted Claim(s)	Sandpiper's Construction	Google's Construction
2	“each CDN DNS server is associated with a respective plurality of content servers” (claim 1); “each DNS server is associated with a respective plurality of content servers” (claim 13)	’112 patent, claims 1 and 13 and all claims dependent therefrom	Plain and ordinary meaning	“each CDN DNS server is configured to resolve a DNS request to the IP address of one of a respective plurality of content servers” (claim 1); “each DNS server is configured to resolve a DNS request to the IP address of one of a respective plurality of content servers” (claim 13)
3	“popularity service”	’573 patent, claims 1 and 19 and all claims dependent therefrom	Plain and ordinary meaning	“a component or functionality that determines the popularity of content and provides information used to determine where the content will be served from”
4	“receiving an instruction to cache the resource at the first server of the first tier of servers when the resource is obtained from the content server of	’573 patent, claim 3 and all claims dependent therefrom	Plain and ordinary meaning; Not indefinite	Indefinite

Term	Claim Term	Asserted Claim(s)	Sandpiper's Construction	Google's Construction
	the content delivery network"			

III. Identification of Most Significant Terms (Patent L.R. 4-3(c))

Google contends that two of the terms identified above are indefinite, Term 1 and Term 4. A finding that a term is indefinite will be dispositive with respect to that claim and all claims dependent therefrom.

IV. Time for Claim Construction Hearing (Patent L.R. 4-3(d))

At this time, the parties anticipate the hearing will take no longer than 90 minutes (45 minutes per side).

V. Witnesses at the Claim Construction Hearing (Patent L.R. 4-3(e))

At this time, the parties do not intend to call witnesses at the hearing.

VI. Requested Factual Findings (Patent L.R. 4-3(f))

A. Sandpiper's Requested Factual Findings

Sandpiper requests the Court make factual findings that its expert, Dr. Kevin Almeroth, is credible, that his testimony provides the view(s) of a person of ordinary skill in the art at the time of the claimed invention(s), and that one of ordinary skill in the art would have understood the disputed claim terms to have the constructions proposed by Sandpiper.

B. Google's Requested Factual Findings

Following the Supreme Court's decision in *Teva v. Sandoz*, 135 S. Ct. 831 (2015), the Court may make factual findings related to the extrinsic evidence, including evidence presented in the declaration of Google's expert Dr. Mark Crovella. Specifically, Google asks the Court to find that Dr. Crovella's testimony is credible,

1 that his testimony provides the view(s) of a person of ordinary skill in the art at the
2 time of the claimed invention(s), and that one of ordinary skill in the art would have
3 understood the disputed claim terms to have the constructions proposed by Google.
4

5 DATED: June 20, 2025

Respectfully submitted,

6 /s/ Mark Schafer

/s/ Vinecnt Ling

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Attorneys for Plaintiff Sandpiper CDN,
LLC

1 **FILER’S ATTESTATION REGARDING SIGNATURES**

2 I, Mark Schafer, am the ECF User whose ID and password is being used to file
3 this **JOINT CLAIM CONSTRUCTION STATEMENT**. Pursuant to Local Civil
4 Rule 5-4.3.4, I hereby attest that concurrence in the filing of this document has been
5 obtained from all counsel. I declare under penalty of perjury that the foregoing is true
6 and correct.

7 DATED: June 20, 2025

/s/ Mark Schafer

8 Mark Schafer

9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that the foregoing document was served by email on counsel
12 for all parties on May 27, 2025.

13 DATED: June 20, 2025

/s/ Mark Schafer

14 Mark Schafer

ATTACHMENT A
Parties' Proposed Claim Constructions and Supporting Evidence

Term	Claim Term	Asserted Claim(s)	Sandpiper's Proposed Construction and Evidence	Google's Proposed Construction and Evidence
1	"attempting to serve said second content from the second content server"	'112 patent, claim 13 and all claims dependent therefrom	<u>Proposed Construction</u> Plain and ordinary meaning; not indefinite. <u>Intrinsic Evidence</u> '112 at Figs. 1-3, 5; 2:11-24; 3:13-23; 4:18-33; 6:32-7:59; 8:46-58; Claims 6-9, 15, 17. '112 patent file history in its entirety, including without limitation claim amendments of July 29, 2010. <u>Extrinsic Evidence</u> Microsoft Computer Dictionary 5th Ed. at 125, 474. Pursuant to Patent L.R. 4-2(b), should Defendant assert this phrase renders claim 13 and all claims dependent therefrom indefinite (see Google's Invalidity Contentions at 291-92),	<u>Proposed Construction</u> Indefinite <u>Intrinsic Evidence</u> '112 patent in its entirety, including without limitation 1:33-35, 4:34-51, 6:32-56, 6:65-8:60, Fig. 3, Fig. 5, claim 13, claim 15, claim 17, claim 23. '112 patent file history in its entirety (SANDPIPER-G-00012345 to SANDPIPER-G-00014261), including without limitation Non-Patent Literature Mockapetris, "Domain Names-Concepts and Facilities," IETF RFC 1034, November 1987 (SANDPIPER-G-00013374 to SANDPIPER-G-00013428); 05/10/2012 Amended Claims (SANDPIPER-G-00014055 to SANDPIPER-G-00014062); 05/10/2012 Applicant Arguments/Remarks Made in an Amendment (SANDPIPER-G-

Term	Claim Term	Asserted Claim(s)	Sandpiper's Proposed Construction and Evidence	Google's Proposed Construction and Evidence
			Plaintiff reserves the right to offer expert testimony rebutting this assertion.	00014063 to SANDPIPER-G-00014066); 01/23/2015 Appeal Brief (SANDPIPER-G-00014205 to SANDPIPER-G-00014229). Related patent applications, patents, and their files histories. <u>Extrinsic Evidence</u> Google may rely on the rebuttal expert testimony of Dr. Crovella, including but not limited to testimony with respect to how a person of ordinary skill in the art would have understood this term in view of the intrinsic and extrinsic evidence.
2	“each CDN DNS server is associated with a respective plurality of content servers” (claim 1);	’112 patent, claims 1 and 13 and all claims dependent therefrom	<u>Proposed Construction</u> Plain and ordinary meaning. <u>Intrinsic Evidence</u> ’112 at Abstract; Figs. 3, 5; 1:64-2:3; 2:11-24; 3:1-4; 4:18-51; 4:56-5:18; 6:32-7:32; Claims 2-5, 11-12. <u>Extrinsic Evidence</u> Microsoft Computer Dictionary 5th Ed. at 90, 125, 170, 362, 474.	<u>Proposed Construction</u> “each CDN DNS server is configured to resolve a DNS request to the IP address of one of a respective plurality of content servers” (claim 1); “each DNS server is configured to resolve a DNS request to the IP address of one of a respective plurality of content servers” (claim 13)

Term	Claim Term	Asserted Claim(s)	Sandpiper's Proposed Construction and Evidence	Google's Proposed Construction and Evidence
	“each DNS server is associated with a respective plurality of content servers” (claim 13)			<u>Intrinsic Evidence</u> ’112 patent in its entirety, including without limitation the Abstract, 3:1–4, 4:34–51, 6:32–56, 6:65–7:32, 7:60–8:60, Fig. 3, Fig. 5, claim 1, claim 13. ’112 patent file history in its entirety (SANDPIPER-G-00012345 to SANDPIPER-G-00014261), including without limitation 11/09/2009 Applicant Arguments/Remarks Made in an Amendment (SANDPIPER-G-00012490 to SANDPIPER-G-00012492); 07/29/2010 Amended Claims (SANDPIPER-G-00012647 to SANDPIPER-G-00012655); 07/29/2010 Applicant Arguments/Remarks Made in an Amendment (SANDPIPER-G-00012656 to SANDPIPER-G-00012657); 02/18/2011 Applicant Arguments/Remarks Made in an Amendment (SANDPIPER-G-00014011 to SANDPIPER-G-00014014); 05/10/2012 Amended Claims (SANDPIPER-G-00014055 to SANDPIPER-G-00014062);

Term	Claim Term	Asserted Claim(s)	Sandpiper's Proposed Construction and Evidence	Google's Proposed Construction and Evidence
				05/10/2012 Applicant Arguments/Remarks Made in an Amendment (SANDPIPER-G-00014063 to SANDPIPER-G-00014066); 05/13/2013 Amended Claims (SANDPIPER-G-00014100 to SANDPIPER-G-00014106); 05/13/2013 Applicant Arguments/Remarks Made in an Amendment (SANDPIPER-G-00014107 to SANDPIPER-G-00014111); 12/06/2013 Applicant Arguments/Remarks Made in an Amendment (SANDPIPER-G-00014174 to SANDPIPER-G-00014178); 01/23/2015 Appeal Brief (SANDPIPER-G-00014205 to SANDPIPER-G-00014229). Related patent applications, patents, and their files histories. <u>Extrinsic Evidence</u> Google may rely on the rebuttal expert testimony of Dr. Crovella, including but not limited to testimony with respect to how a person of ordinary

Term	Claim Term	Asserted Claim(s)	Sandpiper's Proposed Construction and Evidence	Google's Proposed Construction and Evidence
3	"popularity service"	'573 patent, claims 1 and 19 and all claims dependent therefrom	<u>Proposed Construction</u> Plain and ordinary meaning. <u>Intrinsic Evidence</u> '573 Patent Figs. 1-6; 2:13-16; 2:49-65; 3:32-42; 4:32-42; 5:27-6:10; 6:27-7:24; 7:25-8:54; 8:58-12:6; 13:19-32; 13:35-64; 14:4-15. '573 FH 12/31/2020 Notice of Allowance at 2; 7/24/2020 Non-Final Rejection at 3-13. <u>Extrinsic Evidence</u> Microsoft Computer Dictionary 5th Ed. at 475.	skill in the art would have understood this term in view of the intrinsic and extrinsic evidence. <u>Proposed Construction</u> "a component or functionality that determines the popularity of content and provides information used to determine where the content will be served from" <u>Intrinsic Evidence</u> '573 patent in its entirety, including without limitation the Abstract, 4:32-42, 5:27-6:10, 6:27-7:45, 8:8-9:37, 9:65-10:15, 10:50-64, 11:3-61, Fig. 1, Fig. 2, Fig. 3, Fig. 4, Fig. 5, Fig. 6, Fig. 7, claim 1, claim 7, claim 8, claim 11, claim 17, claim 18, claim 19. '573 patent file history in its entirety (SANDPIPER-G-00014503 to SANDPIPER-G-00014822). Related patent applications, patents, and their files histories in their entirety, including without limitation U.S. Patent Application No. 12/408,681 (the

Term	Claim Term	Asserted Claim(s)	Sandpiper's Proposed Construction and Evidence	Google's Proposed Construction and Evidence
				“‘681 App.”); 04/04/2011 Non-Final Rejection re the ‘681 App.; 08/04/2011 Applicant’s Amendment/Response re the ‘681 App.; 08/04/2011 Applicant Arguments/Remarks Made in an Amendment re the ‘681 App.; 11/30/2011 Non-Final Rejection re the ‘681 App.; 03/30/2012 Applicant’s Amendment/Response re the ‘681 App.; 03/30/2012 Applicant’s Arguments/Remarks Made in an Amendment re the ‘681 App.; 07/18/2013 Final Rejection re the ‘681 App.; 06/23/2014 Applicant Arguments/Remarks Made in an Amendment re the ‘681 App.; 11/07/2014 Notice of Allowance re the ‘681 App.; 06/23/2014 Applicant Appeal Brief re the ‘681 App.; U.S. Patent No. 8,930,538. <u>Extrinsic Evidence</u> Google may rely on the expert testimony of Dr. Crovella, including but not limited to testimony with respect to how a person of ordinary skill in the art would have understood

Term	Claim Term	Asserted Claim(s)	Sandpiper's Proposed Construction and Evidence	Google's Proposed Construction and Evidence
4	“receiving an instruction to cache the resource at the first server of the first tier of servers when the resource is obtained from the content server of the content delivery network”	'573 patent, claim 3 and all claims dependent therefrom	<u>Proposed Construction</u> Plain and ordinary meaning; not indefinite. <u>Intrinsic Evidence</u> '573 Patent Figs. 1-5, 7; 2:13-18; 2:28-3:33; 3:34-4:4:2; 4:19-31; 5:27-58; 5:59-6:17; 6:27-34; 6:53-7:24; 7:25-8:54; 8:58-67; 10:57-64; 11:9-61; 12:11-21; 12:60-13:15; 13:19-32. '573 FH 12/31/2020 Notice of Allowance at 2. 2:07-cv-589 12/10/2008 Opinion And Order at 11. <u>Extrinsic Evidence</u> Microsoft Computer Dictionary 5th Ed. at 90, 125, 276, 362, 474. Pursuant to Patent L.R. 4-2(b), should Defendant assert this phrase renders claim 3 and all claims dependent therefrom indefinite (see Google's	this term in view of the intrinsic and extrinsic evidence. <u>Proposed Construction</u> Indefinite <u>Intrinsic Evidence</u> '573 patent in its entirety, including without limitation the Abstract, 2:28-65, 4:19-31, 5:57-7:54, 10:7-41, Fig. 4, Fig. 5, claim 1, claim 2, claim 3, claim 11, claim 12, claim 13, claim 19, claim 20. '573 patent file history in its entirety (SANDPIPER-G-00014503 to SANDPIPER-G-00014822), including without limitation 02/25/2019 Specification, Claims, Abstract, and Drawings (SANDPIPER-G-00014516 to SANDPIPER-G-00014551); 07/24/2020 Non-Final Rejection (SANDPIPER-G-00014701 to SANDPIPER-G-00014725); 09/17/2020 Applicant Amendment and Remarks, Amendments to the Claims, and Remarks (SANDPIPER-G-00014771 to SANDPIPER-G-

Term	Claim Term	Asserted Claim(s)	Sandpiper's Proposed Construction and Evidence	Google's Proposed Construction and Evidence
			Invalidity Contentions at 290-91), Plaintiff reserves the right to offer expert testimony rebutting this assertion.	00014779); 12/31/2020 Notice of Allowance and Fee(s) Due (SANDPIPER-G-00014790 to SANDPIPER-G-00014797). Related patent applications, patents, and their files histories. <u>Extrinsic Evidence</u> Google may rely on the rebuttal expert testimony of Dr. Crovella, including but not limited to testimony with respect to how a person of ordinary skill in the art would have understood this term in view of the intrinsic and extrinsic evidence.