

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

HEADWATER RESEARCH LLC,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 7:25-CV-00372-DC-DTG

Case No. 7:25-CV-00374-DC-DTG

Case No. 7:25-CV-00380-DC-DTG

Case No. 7:25-CV-00518-DC-DTG

JURY TRIAL DEMANDED

**PLAINTIFF HEADWATER RESEARCH LLC'S
RESPONSIVE CLAIM CONSTRUCTION BRIEF**

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* All emphasis in quoted material has been added unless otherwise noted.

I. INTRODUCTION

Google’s proposed constructions are unhelpful, confusing, improperly limiting, and inconsistent with the intrinsic evidence. They should be rejected.

II. ARGUMENT

A. “differential traffic control policy” (Patent 9,277,445 claims 1, 4, 14; Patent 9,143,976 claims 1, 3–5, 8, 11–13, 15–20, 23, 24; Patent 9,179,359 claim 1)

Headwater agrees to the construction of “rule for controlling network traffic that distinguishes between two or more things,” on the condition that it is not limited to one that can only impact network activity.

B. “traffic shaping” (Patent 8,666,364 claims 7, 11, 14, 16, 19, 20, 27)

Headwater’s Proposed Construction	Google’s Proposed Construction
No construction necessary; plain and ordinary meaning.	“control or regulation of a pre-existing flow or throughput of data”

The parties agree that “shaping” refers to “control or regulation.” There is also no dispute that “traffic” refers to a flow or throughput of data-type traffic in this context, as opposed to vehicle traffic. But no rational construction of “shaping” or “traffic,” whether alone or in combination, requires “pre-existing.” The Court should reject Google’s effort to narrow the claim by adding “pre-existing.”

1. There is no need to construe “traffic shaping”

The phrase “traffic shaping” should be given its plain and ordinary meaning under Federal Circuit law. *Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (“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.” (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc))). “There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his

own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Thorner* at 1365. Google does not even argue that either exception should apply here. There is no lexicography or disclaimer here that supports a departure from the plain meaning, especially the type of narrowing Google proposes.

2. The intrinsic record refutes any requirement of “pre-existing” data

The specification includes numerous examples of applying traffic shaping to future data instead of “pre-existing” data, demonstrating that Google’s proposed construction should be rejected. Claims must be read in view of the specification and the intrinsic record. *Phillips*, 415 F.3d at 1315–16. An interpretation that excludes the preferred embodiment is “rarely, if ever, correct.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996). Google’s Opening Brief argues that the specification contains select examples of using “pre-existing” data, but those examples are non-limiting and there are numerous other specification examples proving that “traffic shaping” can apply to both future data and to “pre-existing” data. For example, the specification describes:

As a basic example of such a traffic shaping algorithm, the traffic shaping algorithm can simply reduce traffic speed for all applications and traffic types successively until the service usage projections are within service usage limits for the present service billing period.

374 Case, Dkt. 28-1 (Patent 8,666,364) at 48:43–47. In this example, traffic shaping can reduce *all future traffic* until certain limits are met, even future data flows that do not presently exist. The same can be said of the following exemplary disclosure:

To illustrate an algorithm that is more sophisticated and provides the advantage of leaving many service usage elements or service activities unaffected while only controlling down usage on the most aggressive service usage elements or service activities, the traffic shaping algorithm can identify the highest traffic usage applications and/or websites and successively reduce traffic speed just for the highest usage applications and/or websites until the service usage projections are within service usage limits for the present service billing period.

Id. at 48:47–56. As yet another example, the specification discloses:

If service usage exceeds a threshold, or if using a service usage prediction algorithm results in predicted service usage that will exceed a threshold, then the user can be notified of which applications are causing the service usage overrun or potential service usage overrun, via the user service interface agent. The user can then identify which application service (e.g., traffic associated with a specified high service use or non-critical application, such as for example a high bandwidth consumption social networking website or service, media streaming website or service, or any other high bandwidth website or service transmitting and/or receiving data with the service network) that the user prefers to throttle. As another example, the user could select a service policy that allows for video chat services until those services threaten to cause cost over-runs on the user's service plan, and at that time the service policy could switch the chat service to voice only and not transmit or receive the video. The traffic associated with the user specified application can then be throttled according to user preference input.

Id. at 96:17–40. In this example, a user selects an application service for traffic shaping or throttling. From that point forward, *future* (not “pre-existing”) traffic will be throttled accordingly.

These three examples disprove Google’s argument that “[a]bsent a pre-existing flow or throughput of data, there is no way to apply ‘traffic shaping’ because there is nothing to control or regulate.” 372 Case, Dkt. 61 (Google’s Opening Brief) at 5. Each example describes picking a traffic shaping policy to apply to future traffic of certain applications or services until data usage limits are met. They are not limited to just “pre-existing” data flows.

There is no reason to apply a construction that generally excludes these embodiments of traffic shaping from all dependent claims. Google’s proposal should thus be rejected as to all challenged claims.

3. The Court should not add new limitations missing in claim 7

There are also additional reasons for rejecting Google’s proposal as to dependent claim 7 specifically, which recites in its entirety:

The wireless device recited in claim 1, wherein at least assisting in reducing data usage over the first wireless network associated with the first service activity comprises causing an application level *traffic shaping* associated with the software component.

374 Case, Dkt. 28-1 (Patent 8,666,364) at cl. 7.

Claim 7 includes no limitation on whether data must be “pre-existing” to be traffic shaped, and the Court should not add such a limitation where it does not exist. *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999) (“Courts do not rewrite claims; instead, we give effect to the terms chosen by the patentee. . . . ‘[c]ourts can neither broaden nor narrow claims to give the patentee something different than what he has set forth’”). Google’s Opening Brief focused on dependent claim 11 because it recites “identify a data flow” before “apply an access control or traffic shaping to the data flow.” 372 Case, Dkt. 61 at 3 (“This requirement is most explicit in Claim 11”). But there is no parallel structure in claim 7, so Google’s argument based on claim 11 does not apply to claim 7. Under the general principle of claim differentiation, across dependent claims there is a “presumption that each claim in a patent has a different scope.” *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380 (Fed. Cir. 2006). Here, the inventor’s choice to structure claim 7 (“application level traffic shaping”) and claim 11 (“traffic shaping to a data flow”) differently should be respected. This is yet another reason to reject Google’s proposal as to claim 7, though for the reasons described above (including contrary disclosures in the specification, the Court should reject Google’s proposal as to all challenged claims.

C. “A wireless end-user device” (Patent 9,143,976 claim 1)

Headwater’s Proposed Construction	Google’s Proposed Construction
No construction is necessary; plain and ordinary meaning	Limiting preamble. The same wireless end-user device must include each of the elements recited in the body of the claim

Headwater does not dispute that this preamble is limiting, and does not dispute that the general principles of antecedent basis apply. But there is no reason to single out this particular term with an antecedent basis restriction. What Google seeks is a confusing construction to create

or reinforce a non-infringement argument. Google’s proposal should be rejected.

1. Google’s infringement concern is based on a misunderstanding

Google’s apparent concern is that Headwater is “accusing Google’s cellular networks, servers, routers, and services” of infringement. 372 Case, Dkt. 61, at 5–6. But Headwater has not accused Google’s “cellular networks, servers, routers, and services” of being the claimed “wireless end-user device.” 372 Case, Dkt. 61, at 5–6. Google’s misunderstanding appears to stem from a sentence in Headwater’s infringement contentions, which accuse “Defendant’s communication devices, including mobile phones and tablets ... *that utilize* ... cellular networks, servers, and services ...” Ex. 1 (’976 Contentions) at 2. Headwater’s contentions list a variety of Google Pixel phones, tablets, and watches as exemplary “wireless end-user devices” that utilize cellular networks, servers, and services. *Id.* Headwater has not asserted that a cellular network, like Google Fi, is a “wireless end-user device” that corresponds to the “wireless end-user device” of the preamble.

To be clear, Google Pixel phones, tablets, and watches are accused of infringement as “wireless end-user device[s],” including their ability to operate with a cellular MVNO network like Google Fi, their ability to communicate with internet servers and routers, and their ability to run services. For example, claim 1 begins:

A wireless end-user device, comprising:
a wireless wide area network (WWAN) modem to communicate data for Internet service activities between the device and at least one WWAN, when configured for and connected to the WWAN;

380 Case, Dkt. 26-1 (Patent 9,143,976) at cl. 1. Thus, a device like a Pixel may include a WWAN modem to communicate data for internet service activities between the Pixel and WWAN (like Google Fi/T-mobile) when configured for and connected to Google Fi/T-mobile. But a network like Google Fi/T-mobile is not accused of being the “wireless end-user device” of the preamble.

Moreover, asserted claim 18 recites “The wireless end-user device of claim 1, wherein the one or more processors are further configured to update the first differential traffic control policy based on information received from a *network element*.” *Id.* at cl. 18. This further demonstrates why Headwater’s contentions reference cellular networks and network-side elements, but this does not mean Headwater ever alleged that a cellular network is a wireless end-user device.

2. Google’s ambiguous proposal creates nonsensical non-infringement arguments

Based on Google’s Opening Brief, it appears that Google’s proposal adding that the “wireless end-user device must include each of the elements recited in the body of the claim” is intended to exclude independent “cellular networks, servers, routers, and services” from infringing this claim limitation. *See* 372 Case, Dkt. 61 (Google’s Opening Brief) at 5–6. But Google’s proposed language of “each of the elements recited in the body of the claim” is ambiguous and overbroad, and it may lead to nonsensical non-infringement arguments.

For example, Google should not be allowed to argue that the claim requires the wireless end-user device of the limiting preamble to include “at least one WWAN” inside of the end-user device just because a WWAN is “recited in the body of the claim” under Google’s proposal. This would be nonsensical and obviously not something contemplated by the claims. End-user devices (like smartphones) are only supposed to be “connected to the WWAN” (like Google Fi or T-Mobile) per claim 1. 380 Case, Dkt. 26-1 (Patent 9,143,976) at cl. 1. A wireless network is not required to be “included” in the end-user device, just because the preamble is limiting and a WWAN is “recited in the body of the claim.” That Google’s proposal would only add confusion where no meaningful dispute even exists is yet another reason it should be rejected.

3. Singling out the preamble for antecedent basis creates confusion

Headwater does not dispute that the general principle of antecedent basis applies when “the

wireless end-user device” is recited in the body of the claim. If the Court believes it is necessary to instruct the jury on this, there should simply be a general instruction, such as “[s]ubsequent use of the definite articles ‘the’ or ‘said’ in a claim refers back to the same term recited earlier in the claim.” *Wi-Lan, Inc. v. Apple, Inc.*, 811 F.3d 455, 462 (Fed. Cir. 2016). This applies *anytime* “the” is used. There is no reason to craft a specific construction about how the “same wireless end-user device must include each of the elements recited in the body of the claim” as Google proposes.¹

Not only is Google’s proposal ambiguous and confusing for the reasons discussed in the preceding subsection, but it would also cause further confusion by leaving the jury to wonder whether antecedent basis applies to other terms preceded by “a” or “the” where the Court has not specifically issued a similar construction. Thus, if any instruction on antecedent basis is given, it should be a general instruction and not a term-specific instruction. This is still another reason that Google’s proposal should be rejected.

D. “[the] one or more processors [configured to]” (Patent 9,277,445 claims 1, 2, 6–12, 14, 16, 17, 19, 22, 25)

Headwater’s Proposed Construction	Google’s Proposed Construction
Plain and ordinary meaning	These terms must have the same meaning in each instance that they appear in the claims

Google seeks to narrow the claims in ways that not only lack intrinsic support but in fact are expressly contradicted by the claims and specification. Google’s proposal should be rejected, and these terms should be given their plain and ordinary meaning.

¹ Headwater suspects that Google has included the requirement to “include each of the elements recited in the body” because Google is trying to create a parallel argument that relates to the next claim term. Antecedent basis here has nothing to do with what is in the body of claims. The next claim term is about “one or more processors” as used in the ’445 Patent, and vastly different considerations apply. For example, the ’445 Patent specification discusses distributed processing by these one or more processors based on parts of the intrinsic record specific to processors. Any ruling on “wireless end-user device” should be confined to this term in Patent 9,143,976 and have no effect on the next term.

As an initial matter, Google has misframed the issue as being about whether antecedent basis applies, such that “these terms relates to whether the limitation refers to the same “one or more processors” each time they appear in the claims.” 372 Case, Dkt. 61 (Google Opening Brief), at 8. Headwater does not dispute the basic principle of antecedent basis and does not dispute that a phrase like “the one or more processors” refers back to a previously introduced “one or more processors.” To the extent Google’s argument is just about antecedent basis, the Court should rule that these phrases have their plain and ordinary meanings and, if deemed necessary, instruct the jury on antecedent basis. *See, e.g., Wi-Lan*, 811 F.3d at 462 (“Subsequent use of the definite articles ‘the’ or ‘said’ in a claim refers back to the same term recited earlier in the claim.”).

While Google’s proposed construction does not reflect this, its briefing makes clear that Google seeks to effectively rewrite the claims to add the phrase “*at least one of*” before each recitation of “one or more processors.” 372 Case, Dkt. 61 (Google Opening Brief) at 9 (“there must be at least one such processor that is capable of performing *all* those limitations” (emphasis in original)).² According to Google, there must be at least a *single* processor (rather than a set of “one or more processors”) that has each of the recited configurations, which would be a drastic departure from the plain meaning and read out the ability for “more” processors to collectively have the claimed configurations. In the context of claim 1 of the ’445 Patent, Google’s position is that there would need to be a *single* processor (i.e., at least one processor) configured to (1) “classify, as a first classification...”; (2) “classify, as a second classification...”; (3) “block the Internet service access request...” Thus, if there were a networking processor that performs (1) and (3) and a separate user-interface processor that performs (2), the claim would not be met, even

² As discussed below in subsection II.D.5, Google has waived the right to seek an instruction to the jury with this additional restriction.

though “the one or more processors” *would* together perform them.

Google’s proposal defies the claim language, and nothing in the intrinsic record justifies Google’s proposed narrowing. To the contrary, both the claims and the specification specifically contemplate flexibility and distributed processing. In fact, Google even concedes this and does not dispute what “processor[s]” or “devices” means. Thus, these phrases should be given their plain and ordinary meanings. *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.”).

Google’s position is internally inconsistent and contradicts the admitted fact that the claims cover distributed processing, as well as the intrinsic record clearly showing this. And Google’s cited case law cannot explain away these fundamental problems.

1. Google’s position is inconsistent with the claim language

Google fails to offer a coherent claim construction that makes sense for the three disputed terms here. For example, Google argues that, “for all of the limitations reciting ‘the one or more processors,’ there must be *at least one* such processor that is capable of performing *all* those limitations.” 372 Case, Dkt. 61 (Google Opening Brief) at 10 (second emphasis in original). But if the patentee intended to claim a single processor that would perform all the recited functions, it simply could have recited “a processor” and “the processor.” The “one or more” language chosen by the patentee must be given meaning, as there would have been no reason to claim “one or more processors” (consistent with the disclosure of distributed processing) if the claimed invention would still require a single processor that performs all of the claimed functions. That Google’s interpretation would render the “one or more” language superfluous shows Google is incorrect. *E.g., Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”).

Claim differentiation further shows that Google is wrong, because multiple asserted claims already recite “*at least one* [X]” where the patentee intended to require “at least one.” For example, claim 1 of the ’445 Patent recites “at least one WWAN” and “at least one WLAN.” 372 Case, Dkt. 24-1 (Patent 9,277,445) at cl. 1. This shows that when the patentee wanted to recite “one or more [X]” and then later refer to “at least one of the one or more [X],” the patentee did that expressly. Under principles of claim differentiation, “the one or more devices” should be interpreted differently than “*at least one of* the one or more devices.” There need *not* be “at least one of the one or more processors” which “is capable of performing *all* those limitations.” 372 Case, Dkt. 61 (Google Opening Brief) at 10 (emphasis in original). Not only is Google’s proposed addition of “at least one of” to the claim language not supported by the claims, it contradicts the patentee’s explicit use of that same language elsewhere when intended. The limitation should not be implied elsewhere.

Google’s narrowing proposal also cannot be squared with the following language from claim 1:

one or more processors configured to
 classify, as a first classification ... and
 classify, as a second classification ...
 ...

(i) the first and second classifications performed by the one or more processors...

372 Case, Dkt. 24-1 (Patent 9,277,445) at cl. 1. There is no requirement in the claim language that a single processor performs both the first and second classifications. In fact, the patentee expressly reinforced that these were performed by “the one or more processors,” not “by at least one of the one or more processors,” further demonstrating that Google’s narrowing proposal is misguided. Google’s proposal is litigation-driven and not based on a genuine belief that the meaning of “the one or more” or “the at least one” needs to be clarified for the jury.

Indeed, it is telling that Google does not seek construction of at least seven other claim terms that recite “the one or more [X].” For example, Google does not seek construction of any of the following and has waived any ability to do so now:

- “the one or more processors” (’976 and ’359 patents)
- “the one or more network access conditions” (’976 and ’359 patents)
- “the one or more agents” (’364 patent)
- “the one or more low-level policy agents” (’364 patent)
- “the one or more service classification and measurement agents” (’918 patent)
- “the one or more traffic flows” (Patent 9,647,918 from the 374 Case)
- “the one or more base stations” (Patent 9,609,544 from the 518 Case)

In fact, Google does not seek to construe “the one or more processors” in the ’976 patent or the ’359 patent, even though Google seeks construction of that same phrase for the ’445 patent. Google does not explain why “one or more” should be interpreted inconsistently here. *See, e.g., Vascular Sols. LLC v. Medtronic, Inc.*, 117 F.4th 1361, 1370 (Fed. Cir. 2024) (“a claim term should be construed consistently with its appearance in other places in the same claim or in other claims of the same patent”). These other examples only further show that when Headwater used “the one or more” in patent claims, it did not mean that at least one (or every one) of the items must perform the claimed function. They can do so collectively in a distributed fashion, as the specification contemplates and as Google admits the claims cover. This only further shows Google’s proposal is litigation-driven and not based on a genuine belief that the meaning of “the one or more” needs to be clarified for the jury.

2. Google concedes the claims cover distributed processing, even though its argument contradicts this admitted fact

Critically, “Google does not dispute” that the “inventions of the Asserted Patents are or may be distributed over multiple processors or devices.” 372 Case, Dkt. 61 (Google’s Opening Brief) at 10. As an example of distributed processing, a smartphone may have two processors, where one processor is configured to perform certain functions, and the other processor is

configured to perform certain other functions. In such a system, the processing functions are “distributed” across multiple processors, which would mean that “one or more processors” may *collectively* perform all of the functions. There would not need to be “at least one” *single* processor that performs every function, because that would directly undermine the flexibility of a distributed system. This concept of distributed processing is reflected in the claims and specification (as further discussed below), and it is incompatible with Google’s argument that “there must be at least one such processor that is capable of performing *all* those limitations.” *Id.* (emphasis in original).

3. Google’s interpretation of the claims directly contradicts the intrinsic record and must be incorrect

The intrinsic record expressly contemplates distributed processing, where “one or more processors” can *collectively* perform all of the claim elements. Claims must be read in view of the specification and the intrinsic record. *Phillips*, 415 F.3d at 1315–16. An interpretation that excludes the preferred embodiment is “rarely, if ever, correct.” *Vitronics*, 90 F.3d at 1583.

The specification defines “processor” as “*one or more* devices, circuits and/or processing cores configured to process data, such as computer program instructions. 372 Case, Dkt. 24-1 (Patent 9,277,445) at 3:11–14. “In such cases, the inventor’s lexicography governs.” *Phillips*, 415 F.3d at 1316. There is notably no restriction in this definition requiring that a single processing device or core must execute an entire program, as Google’s proposed narrowing would suggest. Moreover, that the term “processor” can refer to one or more devices/cores that process data only further shows that the patentee intended the flexibility of distributed processing.

As another example, claim 1 recites, in relevant part:

one or more processors configured to
 classify, as a first classification, whether data for Internet service
 activities is to be communicated through the WWAN modem or the WLAN
 modem, and

classify, as a second classification, whether a particular application associated with an Internet service access request, and capable of both interacting with a user in a user interface foreground of the device, ...

...

block the Internet service access request ...

372 Case, Dkt. 24-1 (Patent 9,277,445) at cl. 1. The specification provides descriptions of how these may be accomplished by different “engines,” such as “Network Service Usage Classification Engine 2708” and “Differential Network Access Control Engine 2714” *Id.* at 100:28–102:15. *See also id.* at Fig. 27. The patent defines an “engine” as follows:

As used in this paper, an engine includes a dedicated or shared processor and, typically, firmware or software modules that are executed by the processor. Depending upon implementation-specific or other considerations, an engine can be centralized ***or its functionality distributed.***

Id. at 95:31–35. This is just one example of the patent describing distributed processing.

As another example, the specification describes how ***more or less*** of a process can be moved to different systems as part of a “distributed” system:

It will be apparent to one of ordinary skill in the art that variations of the embodiment depicted in FIG. 13 are possible where ***more or less of the service processor functionality is moved*** onto the modem subsystem or onto the device application processor subsystem. . . . For example, ***the service processor can be distributed*** as a standard feature set contained in a modem chipset hardware of software package or modem module hardware or software package...

Id. at 61:27–41. Thus, Google’s statement that “there must be at least one such processor that is capable of performing *all* those limitations” (372 Case, Dkt. 61 at 10, emphasis in original) is directly contradicted by this example, where “more or less of the service processor functionality” is moved to other processors/systems, especially in a distributed processor system.

Patent 9,277,445 also incorporates by reference Application No. 12/380,773, which issued as Patent 8,799,451 and is asserted in Case No. 7:25-cv-00376, Dkt. 67 at 4–15. *See* 372 Case, Dkt. 24-1 (Patent 9,277,445) at 103:51–54, 104:27–30; Ex. 2 (Patent 8,799,451) at cover, field

(21). Similar arguments from the 376 Case apply here.³

Figures 9–15 in the incorporated '451 Patent provide examples where multiple processors work together, and these examples should not be excluded from the claims by adopting Google's proposed construction. Ex. 2 (Patent 8,799,451) at Figs. 9–15. These figures show various configurations of a "Processor" 930, "Sub-processor" 935, and "Service Processor" 115 working together, as shown in Figure 9 below:

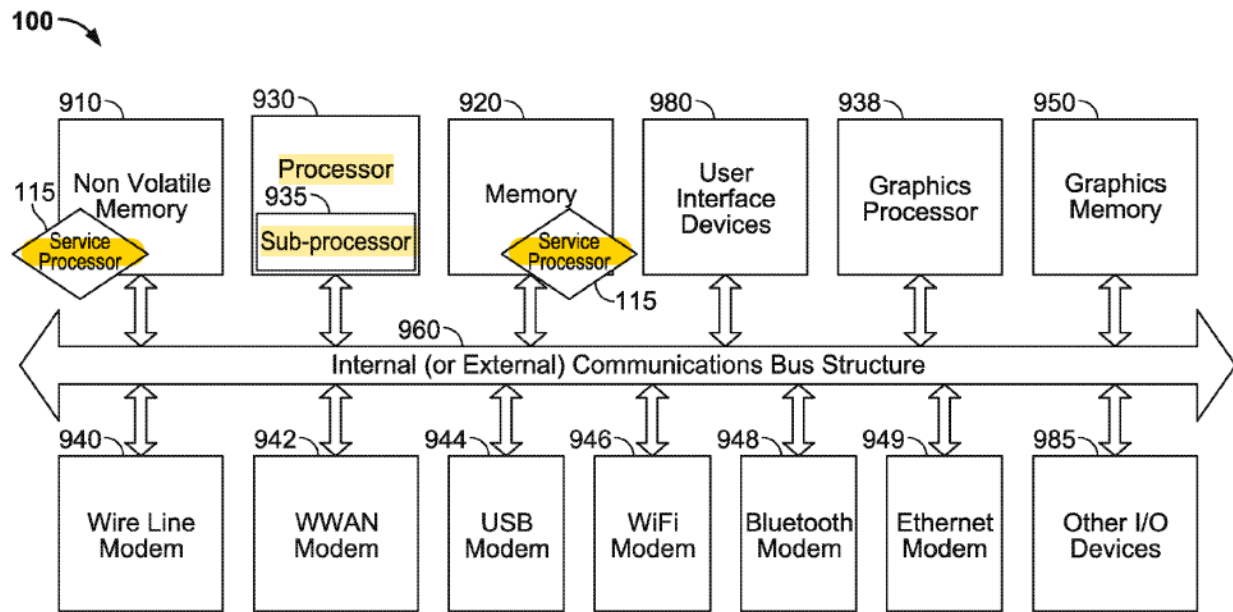


FIG. 9

Id. (annotated). In describing Figure 9, Patent 8,799,451 states:

As shown in FIG. 9, device 100 also includes a processor 930, sometimes referred to as a CPU or central processor unit, an APU or application processor unit, a core processor, a computing device, or many other well known terms. In some embodiments, device 100 includes one or more processors and/or a multicore processor. As shown, processor 930 includes a sub-processor 935. . . . ***In some embodiments, a device includes more than one processor and/or sub-processor,*** and in such a device, one processor and/or sub-processor can have one architecture while another may have a somewhat different or completely different architecture.

³ The arguments for Patent 9,277,445 in the 372 Case overlap with arguments in Case No. 7:25-cv-00376, but exemplary claim language and exemplary citations to the specification may differ.

In some embodiments, one or more of the processors and/or sub-processors can have a general purpose architecture or instruction set, can have an architecture or instruction set that is partially general or partially specialized, or can have an instruction set or architecture that is entirely specialized. ***In some embodiments, a device includes more than one processor and/or sub-processor, and in such a device, there can be a division of the functionality for one or more processors and/or sub-processors.*** For example, one or more processors and/or sub-processors can perform general operating system or application program execution functions, while one or more others can perform communication modem functions, input/output functions, user interface functions, graphics or multimedia functions, communication stack functions, security functions, memory management or direct memory access functions, computing functions, ***and/or can share in these or other specialized or partially specialized functions.***

Id. at 26:49–27:18. This is another clear and explicit disclosure indicating that Google’s proposed narrowing should be rejected. This exemplary disclosure, incorporated into the ’445 patent by reference, contemplates implementations with one processor performing all functions, multiple processors each performing all functions, or multiple processors collectively sharing in the performance of functions. Because it states that “***there can be a division of the functionality for one or more processors and/or sub-processors***” (*id.*), Google cannot be correct that the claims require that, “for all of the limitations reciting ‘the one or more processors,’ there must be at least one such processor that is capable of performing *all* those limitations.” 372 Case, Dkt. 61 (Google Opening Brief) at 10 (emphasis in original).

These are not the only examples. The specification is replete with disclosures indicating that the claimed inventions should be understood to encompass flexible distributed systems in which multiple processing tasks may all be performed by one processor, may all be performed by multiple processors, or may collectively be performed by different combinations of processors (e.g., using bus-based interconnections to coordinate processing tasks). *See also, e.g.,* Ex. 2 (Patent 8,799,451) at Figs. 9, 11, 15A, 15C, and corresponding specification descriptions; *see also, e.g., id.* at 160:15–63. Google’s proposed construction directly contradicts the implementation flexibility described in the intrinsic record and should thus be rejected. *Vitronics*, 90 F.3d at 1583.

4. Google’s caselaw is distinguishable and cannot overcome the intrinsic evidence here

Google’s cited cases are inapposite. Multiple key facts readily distinguish this case from those cited by Google. For example, (i) the disputed claim terms recite “one or more” (not just “a” or “an”), (ii) Google does not seek construction of numerous other “the one or more” claim terms in other asserted patents (including “the one or more processors” specifically) and failed to show its proposed narrowing makes sense for all such instances, (iii) the claims include clear examples of “the one or more” that would not make sense with Google’s proposed narrowing (e.g., “the first and second classifications performed by the one or more processors”), (iv) the specification expressly describes distributed processing that flexibly divides processing among multiple processors, (v) Google “does not dispute” that “the Asserted Patents are or may be distributed over multiple processors or devices” (372 Case, Dkt. 61 at 10), and (vi) the phrase “at least one of” precedes “the one or more” elsewhere in the claims (showing that the patentee knew how to recite such a limitation when it was intended). *See supra*.

Google points to cases like *Finjan*, *Salazar*, and *Carrum*, but while those cases have a similar procedural posture, they have very different underlying facts and very different intrinsic records. *See* 372 Case, Dkt. 61 at 9–10 (citing *Finjan LLC v. SonicWall, Inc.*, 84 F.4th 963 (Fed. Cir. 2023); *Salazar v. AT&T Mobility LLC*, 64 F.4th 1311 (Fed. Cir. 2023); *Carrum Techs., LLC v. Ford Motor Co.*, Nos. 2024-1183, 2024-1480, 2025 WL 2924504 (Fed. Cir. Oct. 15, 2025)). All of those cases followed a more typical “a”/“the” recitation of the disputed limitations, and Google identifies nothing indicating that the patent specifications in those cases are comparable to those here—much less an indication that the parties there agreed the claims cover distributed processing, as the parties do here. Among other things, the specification here:

(i) expressly defines a “processor” to include “one or more devices” (372 Case, Dkt.

24-1 (Patent 9,277,445) at 3:11–14),

(ii) includes an example where functionality is distributed across multiple engines, each of which includes a dedicated or shared processor (*Id.* at 95:31–35, 100:28–102:15, Fig. 27),

(iii) includes an example where “more or less of the service processor functionality is moved onto the modem subsystem or onto the device application processor subsystem. . . . For example, the service processor can be distributed as a standard feature set contained in a modem chipset hardware . . .” (*Id.* at 61:27–41), and

(iv) incorporates a statement that “a device includes more than one processor and/or sub-processor, and in such a device, there can be a division of the functionality for one or more processors and/or sub-processors” (Ex. 2 (Patent 8,799,451) at 27:7–10).

It is a bedrock principle that claims must be read in view of the specification and other intrinsic evidence (*see Phillips*, 415 F.3d at 1315–16), and there is no indication that the intrinsic record of those cases is comparable to that here. The Court should not blindly apply constructions based on different patents with different specifications and different claims (including claim differentiation issues with “at least one of the one or more” being recited elsewhere in the claims).

5. Google waived its right to a narrower construction that a single processor must be capable of performing every limitation

Finally, as discussed above, Google’s briefing argues that, “for all of the limitations reciting ‘the one or more processors,’ there must be at least one such processor that is capable of performing *all* those limitations.” 372 Case, Dkt. 61 at 10 (emphasis in original). This is an additional requirement that is not captured in Google’s proposed construction set forth in its

heading/table.⁴ *Id.* at 9–10. Thus, Google has waived the right to instruct the jury that “there must be at least one such processor that is capable of performing *all* those limitations.” *See TMT Systems, Inc. v. Medtronic, Inc.*, No. 6:20-cv-00973-ADA, Dkt. 155 at 33 (W.D. Tex. June 3, 2022) (“Neither party offers a construction for this term that captures the details of their argument. . . . neither party proposes to further construe the plain and ordinary meaning of an ‘M’ as having certain characteristics the Court adopts the plain and ordinary meaning and finds the parties waived their right to ask for a different construction to be given to the jury.”) (copy provided as Ex. 3).

III. CONCLUSION

For these reasons, no disputed term requires construction. All should be given their plain and ordinary meaning.

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Respectfully submitted,

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⁴ Because Google has mis-framed the issue as an antecedent basis dispute, a ruling on antecedent basis will not imply a limit on the number of processors that must be capable of performing every limitation, because these are separate issues.

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served on May 21, 2026, with a copy of this document via the Court's CM/ECF.

/s/ Marc Fenster

Marc Fenster