

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

QOMPLX LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:25-cv-01383-ADA
	)	
MICROSOFT CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

PLAINTIFF QOMPLX LLC'S
SUR-REPLY CLAIM CONSTRUCTION BRIEF

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Microsoft ignores most of Qomplx's arguments, and where it purports to respond to them frequently dodges their main point or outright pivots to new legal positions. Its reply brief simply confirms that its opportunistic proposed constructions are incorrect. Qomplx respectfully requests that the Court adopt Qomplx's proposed constructions.

I. "midserver" ('663 Patent)

A. Microsoft Cannot Establish that "Deleted Claim Language" Undoes Lexicography.

Black letter law holds that when an inventor provides a special definition of a claim term, "the inventor's lexicography governs." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc). Black letter law further holds that "representations during prosecution **cannot enlarge** the content of the specification." *Biogen, Inc. v. Berlex Labs., Inc.*, 318 F.3d 1132, 1140 (Fed. Cir. 2003) (emphasis added). Microsoft asks this Court to break both of those fundamental rules: to disregard the inventors' lexicography and thereby broaden the scope of the patent claim.

Microsoft's assertion that its cases about claim amendments during prosecution "make no exception for lexicography" ignores the legal analysis in those cases and contradicts the law. Reply at 2. If "the prosecution history appears in conflict with the specification," black letter law holds that "**any ambiguity must be resolved in favor of the specification.**" *Lydall Thermal/Acoustical, Inc. v. Fed.-Mogul Corp.*, 344 F. App'x 607, 614 (Fed. Cir. 2009) (emphasis added); *see also Biogen*, 318 F.3d at 1132 ("Any ambiguity, as may be raised when dispute arises, requires the decisionmaker to focus objectively on the patent specification and claims, for the specification is the basic presentation by the applicant, and the claims represent the final product of a sometimes imperfect process.").

Microsoft urges this Court to disregard the black letter law as "too simplistic," purportedly "because it ignores the impact of Qomplx's claim amendment." Reply at 3. That circular argument

puts the cart before the horse in the same way as Microsoft's "no exception for lexicography" argument. The law plainly holds that the specification, which provides an unambiguous definition of the term "midserver," governs this dispute. The claim amendments do not. None of Microsoft's cases—including *Transonic* and *Polaris*—say otherwise.

B. Microsoft Entirely Ignores the Operative Portion of the Claim Amendments.

Microsoft continues to conflate distinct aspects of the claim amendments at issue. As Qomplx explained previously, the applicant simultaneously added several claim elements and removed others. *See Op.* at 4. The added elements were added to distinguish prior art. *Id.* The applicant's characterization of its amendments as more "clearly teach[ing]" the functions or operation of the midserver—and thereby distinguishing the prior art—plainly applied to the added elements, not to the removed elements; indeed, it is difficult to understand how removing explanatory detail could teach an invention more clearly. *See Op.* at 4. Microsoft's reply brief entirely ignores this.

Ultimately, the prosecution record includes no explicit statement explaining why the applicant removed the specification definition from the claims. But as discussed above and as Microsoft cannot deny, very well settled law across an enormous number of courts addressing claim construction provides that where a specification defines a claim term, the claim term bears that definition, regardless of whether the definition is repeated in the claim.¹ Thus, the definition

¹ *See, e.g., Phillips*, 415 F.3d at 1316 ("[T]he inventor's lexicography governs."); *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) ("[A] claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history."); *Bd. of Regents v. Ethicon, Inc.*, 2018 WL 6313295 at *2 (W.D. Tex. Nov. 30, 2018) ("In the specification, a patentee may define a term to have a meaning that differs from the meaning that the term would otherwise possess. In such a case, the patentee's lexicography governs.") (citations omitted); *R2 Sols. LLC v. Databricks, Inc.*, 2024 WL 5058965 at *11 (E.D. Tex. Dec. 10, 2024) ("To whatever extent applying the patentee's lexicography results in some amount of redundancy in the claims, such

of "midserver" was unnecessary in the claims, and a professional patent prosecutor would have been well aware of this.

Microsoft's observation that "Qomplx's counsel in this case was not its counsel during prosecution" is irrelevant. Reply at 3. The prosecution history is evaluated for its objective import, not for "the examiner's or the applicant's subjective intent." *Biogen*, 318 F.3d at 1139. That is because it is "an official record that is created in the knowledge that its audience [includes] the interested public." *Id.* The applicants' likely reliance on the definition in the specification in order to simplify its proposed claim is not "speculation" about the applicant's subjective intent; it is, instead, the most likely explanation upon an objective reading of the prosecution history. See Op. at 4.

This is especially so given that the applicant did not remove either the "midserver" definition from the specification or the references to "containerized services" from claim 2—both of which it could have done in the very same office-action response as its amendment of claim 1. Microsoft does not dispute that the applicant could have removed the definition of "midserver" via a specification amendment. Microsoft's assertion that amendments to patent specifications "are uncommon" merely underscores that patentees do not often choose to undo their own lexicography. Such a choice should not casually be ascribed to cherrypicked portions of a claim amendment.

C. Microsoft Misstates the Import of its Inapposite Cases.

Microsoft claims to cite certain cases "for the proposition that removing claim language

redundancy is permissible and does not override the patentee's lexicography."); *Array BioPharma, Inc. v. Alembic Pharms. Ltd.*, 2024 WL 1637354 at *1 (D. Del. Apr. 16, 2024) ("When the patentee acts as its own lexicographer, that definition governs.") (citing *Cont'l Cirs. LLC v. Intel Corp.*, 915 F.3d 788, 796 (Fed. Cir. 2019)).

shows an intent to broaden claim scope." Reply at 5. But none of those cases teaches that simply removing claim language can operate to disown an express definition in the specification—because that is not the law.

For example, in the *Laryngeal Mask* case, the Court turned to the prosecution history **only after** finding that the specification did not show lexicographic intent within its four corners:

The specification does not clearly convey the patentee's intent to appoint a special meaning to the term backplate. Having concluded that the patentee did not act as his own lexicographer in this case by clearly defining a claim term, we must determine the ordinary meaning of backplate as used in these claims to one of skill in the art in light of the specification and prosecution history.

Laryngeal Mask Co. Ltd. v. Ambu A/S, 618 F.3d 1367, 1373 (Fed. Cir. 2010). That case did not find lack of lexicography by examining the prosecution history.

Microsoft's attempt to defend its inapposite citation to *DDR Holdings LLC v. Priceline.com LLC* similarly fails to respond to Qomplx's point. 122 F.4th 911. *DDR* recognized an "evolution of the applicant's intended meaning" **across patent applications**; no such "evolution" took place here. *Id.* at 916. If *DDR* has any applicability to the instant claim construction issue, it is in the teaching that when an applicant wishes to change the meaning of a term, the applicant documents that change **in the specification**—something that the applicants here tellingly did not do.

Microsoft's suggestion that *XY LLC v. Trans Ova Genetics, LLC* involved "a tacit disavowal of lexicographic intent," Reply at 4, disregards the actual facts and analysis in that case. The examiner in *XY* had rejected the defined term, which allowed rectangular shapes to count as ovals, as indefinite; and the applicant amended the claim with more detailed language to overcome that specific rejection. 2014 WL 5032693, at *6-7 (D. Co. Oct. 7, 2014); see Reply at 4. It is of no moment here that *XY* refused to construe a term according to a definition that the examiner rejected as indefinite, requiring the applicant to amend the claims.

Finally, Microsoft's take on *Rheox* imagines a legal analysis not found in that case. *Rheox*

held that the scope of the term "calcium orthophosphate" could not include the compounds monocalcium orthophosphate and triple superphosphate (TSP) because Rheox narrowed its claims to overcome a rejection based on prior art with those exact compounds—that is, Rheox got its claims issued over the prior art by explicitly excluding those compounds from the scope of its claims. *Rheox, Inc. v. Entact, Inc.*, 276 F.3d 1319, 1326 (Fed. Cir. 2002). *Rheox* merely stands for the black-letter proposition that "[e]xplicit statements made by a patent applicant during prosecution to distinguish a claimed invention over prior art may serve to **narrow** the scope of the claim." *Spectrum Int'l, Inc. v. Sterilite Corp.*, 164 F.3d 1372, 1378 (Fed. Cir. 1998) (quoted in *Rheox*, 276 F.3d at 1325) (emphasis added). That law, which prevents a patentee from recapturing claim scope that the patentee previously agreed to give up in order to obtain allowance of a claim, does not operate to **broaden** claim scope, as Microsoft seeks to do here by disregarding the specification's express definition of "midserver."

D. Microsoft Fails to Distinguish Other Authorities, Including Microsoft's Own Reliance on the Supposedly Unintended Lexicography.

Microsoft does not deny that it cited to the exact language Qomplx proposes here, to explain what the claimed "midserver" is in an IPR. In Qomplx's view this fact should be nearly dispositive: given that Microsoft cited to this exact language to explain the claimed "midserver" to the Patent Trial and Appeal Board, it cannot oppose using that same language to explain the claim term to jurors.

Microsoft's only response is that it cited to this language in a different portion of the specification than the portion where the applicant provided an explicit definition. This is irrelevant. The language is exactly the same. If, as Microsoft argues, removal of the language from the claims via an amendment during prosecution signaled the patentee's decision that the language ceased to be an accurate definition of the term, then why did Microsoft cite that identical

language to describe to the Patent Trial and Appeal Board what the claimed midserver is?

Microsoft also fails to distinguish *Astra Akteibolag v. Andrx Pharms., Inc.* from the exact situation posed here by Claim 2. 222 F.Supp. 2d 423 (S.D.N.Y. 2002). Like in *Astra*, adopting Qomplx's proposed claim construction here will honor the general principle that "[w]henver a claim is susceptible to one construction that would render it valid and another construction that would render it invalid, the claim will be construed to sustain its validity" by providing antecedent basis for claim 2's "containerized services." Microsoft's citation to *Rembrandt* overlooks that *Rembrandt* was not about claim construction. The *Rembrandt* case reviewed the district court's determination of invalidity for indefiniteness of a claim, refusing Rembrandt's request "to insert 'transmitter section for' into the final element of claim 3" in order to rescue the claim from the grammatical failure that had rendered it indefinite. *Rembrandt Data Techs., LP v. AOL, LLC*, 641 F.3d 1331, 1339 (Fed. Cir. 2010). By contrast, *Astra* teaches that validity **can** be a consideration when considering competing constructions of a claim.

Here, Qomplx is not attempting to avoid an invalidity finding, unlike the patentee in *Rembrandt*. In fact, claim 2 is not currently asserted in this litigation. Claim 2's recital of "containerized services" is merely an additional basis supporting Qomplx's proposed lexicographical construction, just like in *Astra*. Indeed, the applicant's retention of the term "containerized services" in claim 2 calls into question Microsoft's theory that its removal of "containerized services" and other language from claim 1 indicates a desire to abandon the specification's lexicography of "midserver."

II. "virtual appliance software application" ('663 Patent)

Qomplx does not merely "admit" that its construction of this term comes from the Open Virtualization Format ("OVF") specification—a strange choice of framing by Microsoft. Reply at 7. The construction's origin in the OVF specification is **a primary basis** for Qomplx's construction,

as Qomplx made clear in its responsive brief. Resp. at 11-12. That specification would have informed and reflected a POSA's understanding of a virtual appliance. Microsoft's own expert argues in its IPR petition that a POSA would have understood the discussion of the '663 Patent's embodiments in the context of the OVF's Open Virtual Appliance. *Id.*

OVF, Microsoft's expert explains, was a widely and internationally adopted standard file format "for the packaging and distribution of virtual appliances." Ex. 3 ¶ 35 (quoted at Resp. at 11-12). The standards document's definition of the term "virtual appliance"—the very thing that its file format was meant to package and distribute—is thus especially likely to be a reliable indicator of how a POSA would have understood the term.

Microsoft attempts to lump the OVF Specification together with Microsoft's IPR prior art in the generic category of "extrinsic evidence." In so doing, it disregards the fact that the OVF is referenced directly in the '663 Patent's specification and confirmed by Microsoft's own expert as the backdrop for the patent's disclosure. Kashyap, unlike the OVF, has no objective relevance here—Kashyap is relevant only in the sense that Microsoft is asserting it as an invalidity ground in its IPR; there are no references to Kashyap in the intrinsic record. The OVF, by contrast, is immediate context that is expressly referenced by the patent specification.

Microsoft's argument that the construction "excludes other descriptions of virtual appliances" fails to identify any such other "descriptions," and Qomplx is aware of none. Reply at 7. Microsoft's assertion that the construction limits the patent "to the example virtual appliance of the specification" is false because the construction does not require the claimed system to use the OVF's file format or to use an Open Virtual Appliance. The role of the OVF in Qomplx's construction is straightforward: OVF's ***specification document*** provides a definition of the term "virtual appliance" that POSAs would have used to understand the specification and the claims of

the patent. It supplies a reliable and accurate construction of the term, and one that does not require anyone to actually use the standard defined in the OVF Specification.

Finally, Microsoft's representation that "Qomplx's [sic] does not dispute Microsoft's plain meaning of this term" is false. Reply at 7. Qomplx devoted a considerable portion of its responsive brief explaining numerous problems with the 28-word definition that Microsoft claimed in its opening brief was the plain and ordinary meaning of the term. Resp. at 13-15. Microsoft's alternative position on plain and ordinary meaning merely confirms the unreliability of its various proposals. Like the 28-word phrase that Microsoft seems to have now abandoned, it is pure attorney argument unsupported by expert analysis. And it hardly accomplishes anything other than to shuffle around the words of the original term.

III. "distributed computational graph" ('424 Patent)

Microsoft fails to address Qomplx's actual argument against construing this term, and instead attacks a strawman. Qomplx did **not** simplistically argue that, in the claims, the distributed computational graph describes a "certain" flow of output data. Reply at 6. What Qomplx actually argued is that the arrangement of the claims makes clear that the distributed computational **graph** at issue describes distributed computation, and that the claims describe the exact computational flow that is captured in the graph. Resp. at 16.

The specification rigorously defines the term "graph,"² removing any concern that "text" or "a bar graph or a line graph" could somehow get swept in with a distributed computational graph. (Indeed, Qomplx would not oppose a construction of the term "graph" that adopts the specification's lexicographical definition of that term.). Microsoft does not offer any other reasons

² See Ex. B at 9:5-9 (defining "graph" as "a representation of information and relationships, where each primary unit of information makes up a 'node' or 'vertex' of the graph and the relationship between two nodes makes up an edge of the graph").

why this term requires construction, let alone the inappropriate construction that Microsoft has plucked from an exemplary discussion of embodiments.

Microsoft concedes that its construction does not come from patentee lexicography. Reply at 10. Thus, Qomplx is entitled to the full scope of the term's plain and ordinary meaning, as Microsoft's own cases teach. *See, e.g., Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012) ("The patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope."). Microsoft's proposed construction, however, comes from a mere example system in the specification that is used to elucidate the meaning of the generic term "graph," and therefore carves out only a subset of "the full scope of [the term's] plain and ordinary meaning." *Id.*

Microsoft incorrectly asserts that "Qomplx tries to rewrite that sentence as 'merely an example,' but it has no such language." Reply at 10. It overlooks three sentences of such language in the very same paragraph of the specification:

Those familiar with the art will realize that transformation graph may assume many shapes and sizes with a vast topography of edge relationships. The **examples** given were chosen for illustrative purposes only and **represent a small number of the simplest of possibilities**. These **examples** should not be taken to define the possible graphs expected as part of operation of the invention.

Ex. B at 9:44-50 (emphases added). As taught in *Thorner*, the inventors are entitled to the full scope of their claimed invention, and they expressly took the time to caution that the **example** on which Microsoft has based its faulty construction "should not be taken to define the possible graphs expected as part of operation of the invention." Ex. B at 9:49-50.

Microsoft attempts to defend its reliance on prosecution histories for non-asserted patents by inventing a rule that any statement made in the course of prosecution of any application that can be related by priority chain in any way to a patent is automatically relevant to the construction

of that patent. No such rule exists, and the intrinsic record in any event does not support Microsoft's argument.

Microsoft's discussion of *Biogen* gets a crucial piece of the analysis dead wrong. Berlex's statement that the Court in *Biogen* found to "weigh heavily against Berlex's now-proposed broad construction" was made **during the prosecution of the patent being construed**—the '567 patent—and not in the course of prosecuting "a related application" as Microsoft erroneously implies. Reply at 11 (citing *Biogen*, 318 F.3d at 1139). *Biogen* clearly cautioned that "arguments made in a related application do not automatically apply to different claims in a separate application," and it did not rely on such arguments. Instead, *Biogen* ultimately relied on a statement that Berlex had made during the course of the '567 patent actually asserted in that case, whose construction was actually on appeal. *Biogen*, 318 F.3d at 1139. Because Microsoft is unable to establish the kind of logical relationship between the subject matter of the "related" applications it cites, it is forced to rely on overgeneralized assumptions about how such applications actually bear on claim construction.

Indeed, the only alleged relevance that Microsoft alleges for applications 15/141,752 (excerpted in Ex. M) and 16/575,929 (excerpted in Ex. P) is that they are generically "related" to the '424 Patent, *see* Op. at 18, 20; Reply at 10, 11, and that the '752 application "has common subject matter." *Id.* at 10. But Microsoft still does not dispute, as Qomplx pointed out in its responsive brief, *see* Resp. at 18, that the discussion about a "directed computational graph" concerned a claim term and specification passages that **are not present** in the '424 Patent. Microsoft also does not dispute that "the mere fact that the applicant traversed a Section 112(b) rejection by pointing the examiner at a lengthy non-lexicographical disclosure would not require the Court to construe the term." Resp. at 18. Nor does Microsoft cite any law refuting Qomplx's

position.

Finally, Microsoft lacks a cogent response to the fatal defects pointed out in Qomplx's brief. "The answer to Qomplx's question, 'what transformations?'", Microsoft asserts, "is simply the transformations represented by the graph." Reply at 11. That circular non-answer fails to address the construction's fatal lack of antecedent basis, a fundamental requirement for all claim terms. Moreover, the claims state that the "distributed computational graph describes a flow of output data of a first transformation ***pipeline*** to an input of a second transformation ***pipeline***," and Microsoft cites no support for the assumption in its "answer" that transformations must be directly "represented by the graph." Indeed, that would only be true if Microsoft's defective construction were adopted.

Microsoft's similar response with respect to "output messages" falls short for similar reasons. And its contention that "[c]laim 1 recites 'output messages' six times" lays bare its clumsy disregard for the claims' precision: each of those references is to "***pipeline*** output messages," which represent flows between transformation ***pipelines***, not transformations themselves.

IV. "transformation pipeline" ('424 Patent)

This term should be construed as plain and ordinary meaning. Although Microsoft discusses a so-called "specialized meaning" in its brief, Microsoft does not dispute that the '424 Patent lacks a lexicographic definition of this term. Resp. at 21; Reply at 13. Thus, as with "distributed computational graph," the patentees are entitled to the full scope of the term's plain and ordinary meaning. See *Thorner*, 669 F.3d at 1367 ("The patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope.").

Microsoft does not cite any actual law about "specialized meanings," or explain how such hypothetical "specialized meanings"—short of actual lexicography, which is absent here—might

inform (let alone require) construction of a term. To the contrary, Microsoft's own cited cases, like *Thorner*, repeatedly emphasize the importance of preserving the full breadth of the patentee's claim scope in the absence of clear lexicography, disclaimer, or disavowal.

Microsoft's assertion that Qomplx's arguments about Gowda are a supposed "misdirection because Microsoft does not construe this term using Gowda's disclosure" does not actually address Qomplx's argument. As Qomplx explained, **because** Gowda does not use the term "pipeline," there is no basis to assume that the applicant's statements distinguishing Gowda reflect a "specialized meaning" of the term "pipeline," and cannot support departing from the term's plain and ordinary meaning.

V. "transformation" ('424 Patent)

The term "transformation" is not used in the claims of the '424 Patent except as a part of the term "transformation pipeline." Microsoft does not acknowledge this basic fact in any of its briefing—but it also cannot (and does not) dispute it. Construing the term "transformation" would do little more than confuse a jury, which would receive no guidance as to how to apply this extraneous construction in the context of the claims.

Microsoft asserts, contrary to common sense and basic principles of claim construction, that "[t]he fact that [Microsoft's] previous constructions use the word 'transformation' rather than define it supports construing the term." Reply at 14. On the contrary, the onus was on Microsoft to propose clear constructions for the other two disputed terms—ones that do **not** require support from the Court in the form of an additional "construction." Microsoft cites no authority to support its proposition that any party is entitled to constructions of its own unclear constructions.

As Qomplx explained in its responsive brief, construing this term with the specification's mathematical definition only compounds the risk of juror confusion, because it replaces the relatively straightforward term "transformation" with a series of terms that would at best require

the explanation of an expert, and at worst result in tautological confusion. Nowhere is that more apparent than in the electrostatic repulsion between Microsoft's constructions for the other two terms and its construction for this one. A jury will not be aided with a pair of constructions that turn "transformation pipeline" into "a progression of functions which each perform a function performed on zero or more streams of input data, which results in a single stream of output, on a data stream." Microsoft confusingly asserts that "the Court would not present the jury with such a nested construction," but that is precisely what Microsoft seeks—especially where, as here, the term "transformation" does not appear in the claims in any other context.

That kind of confusing implicit nesting is precisely what the court rejected in *Hyperphrase Technologies, LLC v. Microsoft Corp.*, 2003 WL 23142251 (W.D. Wis. June 18, 2003). Microsoft's primary rejoinder to *Hyperphrase* is that it "involves materially different claim language," but the fact that the case did not concern itself with the specific terms "transformation pipelines" or "distributed computational graphs" is hardly a valid reason to ignore it. The rejected *Hyperphrase* construction would have resulted in claim language that read "said keyword phrase being associated with said keyword phrase and an address"—a useless amalgamation of words every bit as tautological as "a progression of functions which each perform a function."

VI. "retrieving . . . determining . . ." ('934 Patent and '426 Patent)

Microsoft contends that if Qomplx's construction "follows 'the plain language' of the claims and 'common sense,'" then "no construction would be needed." Reply at 16. In fact, given that Microsoft is arguing for a broader construction than what the plain language of the claims and common sense imply, a construction here is **required** because the parties raise a fully apparent dispute about claim scope. See *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1359 (Fed. Cir. 2008) ("When the parties raise an actual dispute regarding the proper scope of the[] claims, the court . . . must resolve the dispute.").

Microsoft's especially narrow cases do not support its position: each of them departs, based on the highly specific facts of those cases, from the fundamental rule that method steps require an order where "as a matter of logic or grammar" the claim, as here, "requires that the steps be performed in the order written." *Mformation Techs., Inc. v. Rsch. in Motion Ltd.*, 764 F.3d 1392, 1398 (Fed. Cir. 2014).

For example, in *Microsoft Corp. v. Uniloc 2017 LLC*, the Court reversed the Patent Trial and Appeal Board's construction that "the comparing and determining step are performed by two separate acts in a certain order," because (1) the logic required to get to that conclusion was inconsistent with another aspect of the Board's step-order construction concerning the "receiving and determining steps," and (2) the patent provided examples of embodiments that performed the steps in the opposite order. 2022 WL 11531235, at *3 (Fed. Cir. Oct. 20, 2022). Microsoft here has not provided a single example from the specification that violates the step order sought by Qomplx.

Similarly, in *Interactive Gift Exp., Inc. v. Compuserve Inc.*, the specification disclosed embodiments that did not follow the rejected order. 256 F.3d 1323, 1343 (Fed. Cir. 2001). In *Polaris PowerLED Techs. v. Dell Techs. Inc.*, "imposing [the step-order] requirement [wa]s inconsistent with five of the six preferred embodiments in the specification that contemplate a different order of operations than that proposed by Defendants." 2025 WL 2182327 at *4 (W.D. Tex. Mar. 4, 2025). The *Datatreasury Corp. v. Wells Fargo & Co.* case does not offer a basis for the statement close-cropped by Microsoft, 2009 WL 1393068 at *60 (E.D. Tex. May 11, 2009), and was in any event decided years before the Federal Circuit's decision in *Wi-Lan, Inc. v. Apple, Inc.*, 811 F.3d 455, 462 (Fed. Cir. 2016).

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2026, all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system in accordance with Local Rule CV-5.

/s/ Aron Berger

Aron Berger