

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

CENTRIPETAL NETWORKS, INC.,	)	
	)	
Plaintiff,	)	No. 2:17-cv-00383 (HCM-LRL)
	)	
vs.	)	
	)	
KEYSIGHT TECHNOLOGIES, INC., and	)	
IXIA,	)	
	)	
Defendants.	)	
	)	
_____	)	

**PLAINTIFF CENTRIPETAL NETWORKS, INC.’S REBUTTAL *MARKMAN* BRIEF**

## I. INTRODUCTION

Centripetal's constructions, based on the intrinsic evidence, were carefully crafted to avoid redundancy and provide helpful definitions for the Court and jury to grapple with the complex issues of network communications and security technology in this case. In contrast, Defendants' constructions are contrary to the claims or repeat other limitations recited in the claims, ultimately providing no guidance as to the scope and meaning of the claims. Dkt. No. 104, Defendants' Opening Claim Construction Brief ("Defs' Brief"). Additionally, Defendants offer no construction, even where there is a disagreement about the application of the plain and ordinary meaning, thereby violating Federal Circuit law. For these reasons, Centripetal respectfully requests the Court to adopt Centripetal's constructions.

## II. ARGUMENT

### A. '205 PATENT

Claim Term	Plaintiff's Construction	Defendants' Construction
packet transformation function/functions	function that transforms one or more packets from one state to another	an operation performed on a packet specified by the dynamic security policy, such as forward or drop

Centripetal's construction of "packet transformation function" is based upon the intrinsic record and covers all the embodiments in the specification. It is fundamental in computer science that "transformation" means to change something from one state to another. Declaration of Dr. Nenad Medvidovic ("Medvidovic Rebuttal Decl."), ¶¶ 17-19; Dkt. No. 108, Opening Declaration of Dr. Nenad Medvidovic ("Medvidovic Opening Decl."), ¶¶ 14-15. Centripetal's construction provides this fundamental understanding and applies the appropriate context, namely transforming a packet from one state to another. As detailed in the specification, this transformation or change in the state of a packet can happen in a number of different ways, including replacing headers in the packets, removing information from the headers of packets, or encapsulating them. *See, e.g.*, '205 Patent, Col. 2:36-40; 2:52-56; 6:56-7:36; 9:44-52; 9:59-10:17; 10:29-46; 10:66-11:31; 14:52-59; 14:66-15:3; 15:18-42. Thus, Centripetal's construction

is based upon the intrinsic evidence and will aid the jury in understanding this term recited in the ‘205 Patent.

Defendants’ proposal is contrary to the claims because its proposed construction includes forwarding and dropping packets as part of the recited “packet transformation function.” Independent Claims 1, 17, and 33, however, explicitly require that the packet transformation perform a function “other than forwarding or dropping the packets.” *See id.*, Claims 1, 17, and 33. Because the independent claims necessarily require the “packet transformation function” to exclude forwarding or dropping packets, all the dependent claims similarly have this same requirement. *See Monsanto Co. v. Syngenta Seeds, Inc.*, 503 F.3d 1352, 1359 (Fed. Cir. 2007) (a dependent claim contains all of the limitations of the independent claims from which it depends). Thus, every claim asserted in this case involves the “packet transformation function” in which dropping and forwarding packets cannot be part of this function. Given the explicit limitation that excludes dropping and forwarding from the definition of “packet transformation function” as recited in the claims, Defendants’ proposal that the packet transformation function includes forwarding and dropping packets contradicts the language of the claims. Such a contradictory construction cannot be reconciled and, at the very least, would cause substantial confusion about the meaning and scope of the claims, including for a jury. Such a contradictory construction cannot be reconciled and, at the very least, would cause substantial confusion about the meaning and scope of the claims, including for a jury. *ActiveVideo Networks, Inc. v. Verizon Commc'ns Inc.*, 801 F. Supp. 2d 465, 485 (E.D. Va. 2011) (rejecting a claim construction because the proposed construction “is only likely to confuse, rather than clarify, the term for the jury.”).

Defendants’ proposed construction should also be rejected because it repeats claim limitations that are already recited in the claim with the inclusion of “specified by the dynamic security policy.” According to the Federal Circuit, claim construction should not be redundant of other limitations in the claim. *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1237-38 (Fed. Cir. 2016) (holding that “[c]onstruing a claim term to include features of that term already recited in the claims would make those expressly recited features redundant.” (citations omitted)).

Defendants' inclusion of "specified by the dynamic security policy" in its proposed definition creates confusing redundancy of a limitation already in the claims because they recite that the "packet transformation functions [are] specified by the plurality of dynamic security policies." Defendants' proposed definition is also superfluous of the claim language, which will only lead to confusion regarding how the claims are to be interpreted.<sup>1</sup> Because Defendants' proposal does not provide a meaningful definition to the "packet transformation function" limitation such that one can make sense of the meaning and scope of the claims, it should be rejected.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
dynamic security policy/policies	a non-static set of one or more rules, messages, instructions, files, or data structures associated with one or more packets	any rule, message, instruction, file, data structure, or the like that specifies criteria corresponding to one or more packets and identifies a packet transformation function to be performed on packets corresponding to the specified criteria

Centripetal's construction provides meaning to the term "dynamic" and avoids repeating the limitations found in the claims. Its construction specifies that "dynamic" means that the security policy is non-static and can be updated, a concept that is well understood to those of skill in the art. Medvidovic Rebuttal Decl., ¶¶ 21-22; Medvidovic Opening Decl., ¶ 16. Not only is this how one of ordinary skill in the art would interpret this term, this is how the specification and the claims describe security policies, namely that they can be updated with additional rules. '205 Patent, 2:12-26, 6:56-61, 18:42-50. Further, Centripetal's construction identifies the appropriate attributes of the security policy that are disclosed in the specification, namely that the security policy includes rules, messages, instructions, files or data structures that are associated with one or more packets. *See id.*, 2:1-11, 7:56-8:28. Thus, Centripetal's construction is based upon the intrinsic record and provides a meaningful definition.

<sup>1</sup> Defendants' proposed construction magnifies the potential for confusion regarding the meaning of the claims because "[d]ynamic security policy" separately is a claim term where the parties have proposed competing constructions. Thus, Defendants' nesting of one construed term into another construed term renders the claims with Defendants' proposed constructions meaningless or utterly circular when they are applied to claims.

While Defendants’ proposal appropriately states that a dynamic security policy includes rules, messages, instructions, files, or data structures, the remainder is redundant of the limitations recited in the claims. As noted above, Claim 1 of the ‘205 Patent already states that “packet transformation functions [are] specified by the plurality of dynamic security policies.” Thus, there is no need to construe a “dynamic security policy” to “identify a packet transformation function.” *Apple*, 842 F.3d at 1237-38 (constructions should not be redundant of other claim limitations). Repeating other portions of the claim is unnecessary and does not providing a meaningful construction for the relevant claims.

Contrary to Defendants’ arguments in its brief, Defendants’ construction is inconsistent with the requirements of the claims. For example, Claim 91 states that the “criteria [is] specified by the one or more rules.” *See* ‘205 Patent, Claim 91. Defendants’ construction which specifies that the “criteria correspond[s] to one or more packets” cannot be harmonized with this claim language and demonstrates that Defendants’ proposed construction cannot be appropriate for this patent when applied to its claim language. Thus, Defendants’ inclusion of this “criteria” is incompatible with the ‘205 Patent’s claims and, at the very least, would cause substantial confusion for the jury.

Finally, Defendants’ proposed construction is improper because it violates the doctrine of claim differentiation. *Versa Corp. v. Ag-Bag Int’l Ltd.*, 392 F.3d 1325, 1330 (Fed Cir. 2004) (stating that the doctrine of claim differentiation creates a presumption that each claim in a patent has a different scope) (citation omitted). While the specification does state what dynamic security policies *can* include, the ‘205 Patent discloses that the invention does not always have to include criteria. Specifically, certain claims of the ‘205 Patent require “criteria,” while others do not. For example, “criteria” is a recited limitation found in independent Claims 91, 93, and 95, but not in independent Claims 1, 17, and 33. *See* ‘205 Patent, Claims 1, 17, 33, 91, 93, and 95. By applying the same definition, irrespective of these specific differences recited in the independent claims, Defendants’ proposed construction violates claim differentiation. Furthermore, these specific differences recited in the independent claims demonstrate that the

patentee intended where the “criteria” requirement was to be applied and instances where it should not. Thus, Defendants' proposed construction runs afoul of the disclosures contained in the intrinsic evidence as to when the “criteria” requirement is necessary and imports an improper limitation into Claims 1, 17 and 33 and their dependent claims. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (“[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs.”). For these reasons, Centripetal's construction provides the appropriate meaning for this claim term.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
rule/rules	condition or set of conditions that when satisfied cause a specific action to occur	(i) packet-identifying criteria and (ii) a function to be performed on the identified packets

Centripetal's construction is the plain and ordinary meaning of the term “rule” in computer science. Because lay persons often use the term “rule,” providing the plain and ordinary meaning as used in '205 Patent is necessary. The plain and ordinary meaning is a “condition or set of conditions that when satisfied cause a specific action to occur.” Medvidovic Rebuttal Decl., ¶ 24; Medvidovic Opening Decl., ¶ 17. Centripetal's straightforward construction is when a condition is satisfied, a corresponding action occurs. *Id.* This meaning is consistent with the specification and provides meaning to the jury regarding what a rule is for the technology at issue. '205 Patent, Col. 20:23-27, 21:38-42, 26:31-37.

Contrary to Defendants' argument, Centripetal's construction does not exclude a “function.” Rather, Centripetal's construction explicitly requires that an “action” occurs upon a condition is met. This action can include a function that is performed on the packets. *See* Medvidovic Rebuttal Decl., ¶ 24; Medvidovic Opening Decl., ¶ 17. Defendants, in fact, agree as they equate “function” with “action,” pointing to Figure 3 of the '205 Patent. *See* Defs' Brief at 22. Centripetal did not include the word “function” in its construction because a number of claims do not require a function to be performed, but rather describe another type of action. For example, Claim 1 does not require a function to be formed. *See* '205 Patent, claim 1. '205

Patent, Claim 3, however, specifically recites a function to be performed, namely a “packet transformation function.” *See id.*, Claim 3. Thus, it is improper to construe “rule” to require a function to be performed as this imports limitations into Claim 1, which do not exist.

In addition, contrary to Defendants’ assertions, the claims do not define rules as requiring packet identifying information and functions to be performed on identifying packets. Instead, the claims explicitly recite different types of rules. For example, Claim 1 defines two sets of rules, one that specifies packets that can be forwarded and another to specify packets that can be dropped. However, as noted above, Claim 1 does not require a function to be performed. *See* ‘205 Patent, Claim 1. Claim 3, on the other hand, includes a second set of rules that do include a packet transformation function. *See id.*, Claim 3. Because the claims involve different types of rules vary widely in scope, and do not necessarily include both packet-identifying information and functions that are performed on the packets, Centripetal’s construction should be adopted.

Lastly, like Defendants’ improper proposed construction of “dynamic security policy,” its proposal for “rules” includes the word “criteria” which is inconsistent with the claims, conflates claim scope, and would confuse a jury. Thus, Defendants’ construction is improper.

#### **B. ‘077 PATENT**

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
rule/rules	condition or set of conditions that when satisfied cause a specific action to occur	(i) packet-identifying criteria and (ii) a function to be performed on the identified packets

The parties offer the same competing constructions for this term “rule” as they did for the same term for the ‘205 Patent. Thus, for the same reasons described above for the ‘205 Patent, “rule” should be construed to account for all the various rules defined in the claims and specification. Centripetal’s plain and ordinary definition provides such a construction, namely that when a condition is satisfied, a corresponding action occurs. Medvidovic Rebuttal Decl., ¶26.

Also, Defendants repeat their “rule” arguments articulated for the ‘205 Patent. All the same problems with Defendants’ proposed construction for the ‘205 Patent described above

apply here. Defendants also present a convoluted attorney argument with no technical support that Centripetal's construction conflates a rule with an IP address. However, it is well understood that an IP address is an internet protocol address that packets can use to traverse the Internet. Medvidovic Rebuttal Decl., ¶ 26; Medvidovic Opening Decl., ¶ 18. It is unclear why Defendants contend that an IP address is a rule or that Centripetal's construction conflates a rule with an IP address. Thus, Centripetal's construction is proper.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
switching matrix of local area network (LAN) switch	a matrix contained within a local area network switch that may be configured to direct traffic from one device to another device in the network	a structure configured to switch packets received from one or more computers on a local area network to one or more computers on the local area network

Centripetal's construction gives meaning to all the words at issue in the claim term, including what is a "matrix" and how it operates, which provides a meaningful definition for the jury for the complex security technology at issue. Medvidovic Rebuttal Decl., ¶ 28; Medvidovic Opening Decl., ¶ 19. Indeed, a "switching matrix" is not common everyday terminology.

Defendants' proposed construction, on the other hand, provides no definition for the "switching matrix" portion of the term, essentially "reading out" that limitation from the claim with its proposal. In fact, Defendants' generic proposed construction provides no meaningful definition at all and would not assist the jury regarding what it means to "switch packets."

Defendants' challenge to Centripetal's construction is that its construction does not require a switch be configured to drop packets. Defs' Brief at 28. Defendants' argument is a red herring because it is arguing about a different part of the "switching matrix" claims. All these claims require a switch to be configured to drop a portion of the packets, but that limitation is found later in these claims and is not part of the disputed term at issue here. *See* Claims 1, 3-5, 7, 9-11, 13 and 15-17 (reciting the LAN switch is configured to drop a portion of the packets). Thus, this disputed term does not involve that part of the claim language. As a result,



Defendants' arguments are not directed to Centripetal's construction of "switching matrix," but rather the entirety of the scope of the claims, which is not the issue being briefed.

For the same reasons, Defendants' assertions regarding whether Centripetal's construction is consistent with positions before the U.S. Patent and Trademark Office ("PTO") make no sense. Defs' Brief at 28. What is being construed here is the portion of the claim addressing the "switching matrix", not the other limitations contained in these claims regarding configuring the LAN switch to drop a portion of the packets, which is separately recited in the claims, as noted above. *See e.g.*, '077 Patent, Claim 1 ("modify a switching matrix of a local area network (LAN) switch ... such that the LAN switch is configured to drop the portion of the packets ..."). Thus, Centripetal's construction does not contradict its previous PTO statements because it does not read out a "switching matrix of local area network (LAN)" that was introduced into the claim during prosecution. For these reasons, Defendants' arguments should be disregarded.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
provision/provisioning each device of a plurality of devices, with one or more rules generated based on a boundary of a network protected by the plurality of devices with one or more networks other than the network protected by the plurality of devices at which the device is configured to be located	change a device from one state to another based on one or more rules derived from the boundary of a different network	no construction needed/plain meaning

The primary issue here is what is the plain and ordinary meaning of "provision" or "provisioning." Centripetal's proposed construction should be adopted because it provides the plain and ordinary meaning of "provision" which is to change the state of a device. Centripetal's construction is consistent with the intrinsic record which describes how each device changes its state when provisioned and is consistent with the understanding of one of skill in the art. *See, e.g.*, '077 Patent, 16:61-17:9 (discussing how dynamic security policies provision packet security gateways to protect the boundaries of a network); Medvidovic Rebuttal Decl., ¶¶ 30-31;

Medvidovic Opening Decl., ¶ 20. Furthermore, as “provision, each device of a plurality of devices, with one or more rules ...” is not language used day to day, this construction will assist the Court, non-technical experts and jury to understand what “provision” means in the context of the ‘077 Patent.

In failing to provide a construction for this term, Defendants have forfeited the ability to suggest a different construction. The Federal Circuit has held that use of the “plain and ordinary meaning” is inadequate when there is a dispute regarding what the actual plain and ordinary meaning is. *Eon Corp. IP Holdings v. Silver Spring Networks, Inc.*, 815 F.3d 1314, 1319 (Fed. Cir. 2016) (holding that the district court must provide a construction where the plain and ordinary meaning is disputed). Because Centripetal is the only party to provide a construction for this term and Defendants do not describe their alleged plain and ordinary meaning definition, Centripetal’s construction is unrebutted and should be adopted.

Defendants include a convoluted argument regarding packet transformation functions. Specifically, Defendants assert that “‘the plurality of devices’ is necessary to protect the boundary of the first network.” Defs. Brief at 30. However, this conclusory statement is not what is recited in the claims. Instead, the claim language requires a device to be updated based on rules from devices in the boundary of a different network, which is exactly what Centripetal’s construction covers as it recites “based on one or more rules derived from the boundary of a different network.” Thus, Centripetal’s construction does not eliminate any element of the term from its construction. Defendants are attempting to read in limitations that do not exist by cherry picking words from the claim term and interpreting to require the plurality of devices to protect the boundary for the first network. This is yet another reason why Defendants’ undefined and mysterious “alleged plain and ordinary meaning” is problematic and likely why Defendants never provided any explanation of its alleged “plain and ordinary meaning” of this claim term.

Furthermore, contrary to Defendants’ assertion, packet transformation changes the state of the packet. As described above in Section IIA, packet transformation can involve adding and removing header information which transforms or changes the state of the packet from one form

to another.<sup>2</sup> This is explicitly disclosed in the specification. *See* '077 Patent, Col. 10:29-45 (“packet transformation function may be configured to alter or modify the destination address of the packets”), 15:33-40, 15:51-16:9. Thus, Defendants’ argument that packet transformation does not change a packet’s state is contrary to the intrinsic record and the understanding of one of skill in the art. As such, it should be disregarded.

Claim Term	Plaintiff’s Construction	Defendants’ Construction
subscription service	service that provides aggregated information related to malicious network traffic	service that aggregates information associated with malicious network traffic

Centripetal’s construction explains the meaning of “subscription service” as it is used and disclosed in the ‘077 Patent, namely a service that provides aggregated information related to malicious network traffic. Significantly, Defendants presented no argument that Centripetal’s construction is wrong, only suggesting that their compromise construction which reads in a limitation into the claim construction should be applied. Defendants appear to agree that a “subscription service” is simply a service that provides aggregated information as part of a subscription. *See* Defs’ Brief at 29. Centripetal’s construction simply explains that, in light of the disclosures of the ‘077 Patent, the information that is provided as part of the subscription service is information related to malicious network traffic.

Defendants’ proposed construction purports to construe the term “subscription service” as an **aggregation service** because it construes the “subscription service” to be a “service that **aggregates** information.” There is, however, no support in the specification for requiring that the subscription service “aggregate[] information associated with malicious network traffic,” as the Defendants propose. Defendants do not cite any intrinsic evidence for such a proposition because they cannot. Such a requirement reads embodiments out of the asserted claims explicitly disclosed in the specification that describe a subscription service, rather than as an

<sup>2</sup> In general terms, a packet comprises a header and a payload. The header contains control information for delivering the payload while the payload is the actual data being delivered. Medvidovic Rebuttal Decl., ¶ 56.

aggregation service. *See* ‘077 Patent, 14:7-10, 21:16-27, 22:17-28, 23:27-32. Moreover, one of ordinary skill in the art, as well as a lay person, would not understand a subscription service to be a service that aggregates information. Applying common sense, a subscription service is a service that someone subscribes to. Medvidovic Rebuttal Decl., ¶ 33; Medvidovic Opening Decl., ¶ 21. Accordingly, Centripetal’s proposed construction should be adopted.

### C. ‘370 PATENT

Claim Term	Plaintiff’s Construction	Defendants’ Construction
network device	a computing device in a network that is capable of transmitting and receiving packets	device that interfaces hosts with a network

Centripetal’s construction of this term aligns with the teachings of the patent, including the claims and specification as a whole. Defendants agree with Centripetal’s construction and state in their opening brief that a network device is a device that “identifies the device that receives and transmits the packets.” *See* Defs’ Brief at 18. Thus, there should be no dispute with Centripetal’s construction.

Centripetal’s construction provides meaning for the term “network device” because it focuses on the technology involved in this case and will be helpful for the jury to understand that the issues in the case involve packet-level analysis as opposed to analysis of other types of data on the network stack.<sup>3</sup> Accordingly, Centripetal’s construction is proper as it is consistent with the intrinsic record which is about packet-level technology, as stated in Centripetal’s Opening Claim Construction Brief (Dkt. No. 106 at 12-13) and provides the jury with a meaningful definition.

<sup>3</sup> Generally, the OSI model of the network stack contains seven layers. Starting from the top, the layers include the application layer, presentation layer, session layer, transport layer, network layer, data link layer, and physical layer. The network layer is typically responsible for packet forwarding. Applications, on the other hand, are handled at the application layer. For example, Microsoft Outlook operates at the application layer which allows for the generation of email. Following this example, the email message would be converted to packets and sent on the networking layer to its intended destination. Medvidovic Reply Decl., ¶ 56.

Defendants’ proposed construction is inconsistent with the claims because the claims require that the communication path to be the interface, while Defendants’ proposed construction requires the device to be the interface. For example, Claim 1 of the ‘370 Patent states that “a communication path that interfaces the network device and the first network comprises a first tap.” Defendants’ proposed construction, however, implies that the network device is the interface rather than the communication path. As a result, Defendants’ construction is improper because it is inconsistent with the claims and, at the very least, would confuse a jury. *See Virtronics Corp. v. Conceptrome, Inc.*, 90 F.3d 1576, 1582 (Fed. Circ. 1996) (claim construction begins with the words of the claims.).

Defendants’ only complaint about Centripetal’s construction is the conclusory statement that Centripetal’s construction collapses the distinction between the “device in a communication link” and the “network device.” *See* Defs’ Brief at 18. This confusing argument is infirm because Centripetal proposed different constructions for “network device” and “device in a communication link” which explain different attributes of the system. On one hand, Centripetal’s construction of “network device” explains that technology centers around packet-level analysis while Centripetal’s construction of “device in a communication path” emphasizes that the communications paths form a computer network. There is nothing in these constructions that suggests that Centripetal is conflating a device in a communication link with a network device. Thus, the Court should Centripetal’s construction.

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
host	a computer device within a network that provides services other than simply acting as a store and forward processor or communications switch	computing or network devices (e.g. servers, desktop computers, laptop computers, tablet computers, mobile devices, smartphones, routers, gateways, switches, access points, or the like), or a communication interface thereof

The intrinsic evidence supports Centripetal’s construction. Each of the embodiments of a “host” discussed in the specification describes hosts that do more than store and forward packets.

*See, e.g.*, ‘370 Patent, Col. 3:37-39, 4:36-38, 4:52-63, 5:23-30, 5:33-39, 6:41-43, 6:50-53, 7:13-23, 9:20-22, 9:31-35, 9:55-63, 10:26-35, 12:41-13:25, 13:36-47. Furthermore, the claims themselves recognize the need to generate data identifying the host. *See* ‘370 Patent, claim 1. As recognized by those of skill in the art, identifying a store and forward device provides less value because an administrator would want to know who originated the data or manipulated the data rather than a device that is merely relaying the data. Medvidovic Rebuttal Decl., ¶¶ 39-40; Medvidovic Opening Decl., ¶¶ 24-25.

In their brief, Defendants do not provide any reasons for its construction other than to cite the specification. But Defendants’ citation to the specification cuts against its argument. As Defendants point out, the specification states that host *may* include a number of devices, but does not provide a clear and unmistakable disclaimer as to what hosts *must* be. *Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365-66 (Fed. Cir. 2012) (plain and ordinary meaning applies unless patentee acts as lexicographer or patentee disavows scope of claim term). In other words, the specification provides examples of hosts, but does not provide an explicit definition of the term. Because there is no clear and unmistakable disclaimer as to what hosts must be, Defendants’ construction is improper.

The more appropriate place to look is the claims which specify that the system generates data identifying the host. Based on that requirement, a host is not simply a store and forward because the system is attempting to identify the host to determine, for example, whether it possesses a security threat. One of skill in the art would recognize that a store and forward is highly unlikely to pose a security threat because it merely relays data from another source. Medvidovic Rebuttal Decl., ¶¶ 39-40; Medvidovic Opening Decl., ¶¶ 24-25. As such, there is generally no need to identify a store and forward for security purposes. Because Centripetal’s construction is aligned with the scope of the claims, it should be adopted.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
rule/rules	condition or set of conditions that when satisfied cause a specific action to occur	(i) packet-identifying criteria and (ii) a function to be performed on the identified packets

“Rule” recited in the ‘370 Patent is used in the same manner as the ‘205 and ‘077 Patents. The parties have proposed the same competing constructions for “rule” for these three patents.

The only unique argument that Defendants raise in their brief with regard to “rule” for the ‘370 Patent cuts directly against their construction. In their brief, Defendants cite to Claim 22 of the ‘370 Patent and highlight different sets of rules in the claims. However, this citation demonstrates that the claims themselves define what the rules are and, in two of the three sets of rules, they only identify packet-identifying information, and do not include functions. *See* 370 Patent, claim 22. This is fatal to Defendants’ construction because their construction requires rules to include both identifying information *and* functions, which is contrary to at least some of the rules recited in claims. As such, Defendants’ construction cannot be correct.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
log entries	plain and ordinary meaning	notations of unique identifying information for each packet

Log entries simply means entries in a log. This term is frequently used by those of skill in the art and lay persons can comprehend its meaning. Medvidovic Rebuttal Decl., ¶¶ 44-45; Medvidovic Opening Decl., ¶ 28. As such, there is no reason to construe this term.

Defendants’ proposed construction should be rejected because there is no support in the intrinsic record that log entries have to be unique. As a preliminary matter, the word “unique” does not appear anywhere in the ‘370 Patent. Moreover, Defendants’ construction is not the well-understood definition of log entry and, as such, Defendants are required to point to a clear and unmistakable disclaimer in the intrinsic record to support its construction. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (holding that the district court should avoid importing limitations from the specification into the claims). Defendant’s citation to numerous examples of data undermines their construction, because these examples do not necessarily have

to be unique, such as network layer information, transport layer information, application layer information and payload.<sup>4</sup> Defs’ Brief at 15. For example, if the same email is sent to two different people, the packets that are used to send the email may have the same payload, namely the contents of the email. Medvidovic Rebuttal Decl., ¶¶ 44-45; Medvidovic Opening Decl., ¶¶ 28. If the email was sent using Microsoft Outlook, those two packets may have the same application layer information, specifically identifying Microsoft Outlook as the application. As such, in this simple example, the payload and application information would not be unique identifying information for each of those packets. The same holds true for the other information that Defendants’ cite in support of their construction. Thus, Defendants have no intrinsic support for their construction.

Defendants’ construction is also improper because it implies that each log entry must include unique identifying information for each packet. But the specification teaches away from this concept, and states “generating an entry in flow log 504 for the packets received in step 17.” ‘722 Patent, 7:23-25. (emphasis added). In other words, the specification teaches that one entry can be generated for several packets, such that the same entry can be used in several places and does not need to correspond to a single packet. Adopting Defendants’ proposed construction would result in improperly reading out embodiments described in the specification. *See, e.g., Hyperphrase Techs., LLC v. Google, Inc.*, 260 Fed. Appx. 274, 280 (Fed. Cir. Dec. 6, 2007) (“A claim construction that excludes an embodiment of the relevant claim(s) is typically incorrect”) (citations omitted). Thus, Defendants’ proposed construction should be rejected.

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
correlate/correlating	programming instructions that cause a packet correlator to determine whether a portion of data in one log entry corresponds to a portion of data in another log entry	determining by hardware or software (e.g. a packet correlator) whether log entries in different files correspond to the same packet

<sup>4</sup> As set forth above, these different layers of information correspond to the seven layers in the OSI model which may be found in the header or payload of a packet.



Centripetal's construction should be adopted because it is consistent with the intrinsic record. As discussed in Centripetal's opening brief, the specification provides that a "packet correlator" is the device that includes programming instructions that cause it to determine whether a portion of data in one log entry corresponds to a portion of data in another log entry. *See, e.g.*, '370 Patent, Col. 8:23-67, 9:1-19, 9:45-54, 11:33-12:27, 13:56-59; Dkt. No. 106 at 17. Because Centripetal's construction is fully support with the intrinsic record, it is proper.

Defendants' assertion that determining whether a portion of data in one log entry corresponds to data of another log entry is not found in the intrinsic record is a red herring because the specification teaches this very concept. Defs' Brief at 15. The specification explicitly teaches that "packet correlator 128 may compare data in entry 306 with data in entry 312 to correlate P1' with P1." '370 Patent, 8:26-31 (bracketed text omitted). Thus, the intrinsic record discloses that log data entries are compared to one another in order to perform correlation, which is consistent with Centripetal's construction. In another example, the '370 Patent provides "packet correlator 128 may compare data in one or more entries of log(s) 142 with data in one more entries of log(s) 142..." *Id.*, 8:41-44. This explicit disclosure provides, again, that the packet correlator is comparing log entries to one another. These examples alone demonstrate that Defendants' assertions regarding the intrinsic evidence are incorrect.

The crux of the dispute is Defendants' contention that the log entries are in different files. Defendants do not provide any intrinsic support for its construction but instead provide a string of citations that explain how log entries within the same file can be correlated.<sup>5</sup> For example, Defendants cite Column 8, Lines 24 – Column 9 Line 19, in which the '370 Patent explains that "packet correlator 128 may compare data in one more entries of log(s) 142 with data in one or more other entries of logs(s) 142 to determine correlation scores...." This citation explicitly

<sup>5</sup> Claim 22, likewise, does not support Defendants' proposed construction. *See* Dkt. No. 104 at 14. Claim 22 only requires that log entries are compared to each other. It does not state anywhere in the claim that those entries must be in different files. Thus, Defendants conclusory and unsupported remarks regarding Claim 22 should be ignored.

provides that the packet-correlator can compare different entries in the same log file, namely log 142, which undermines Defendants' position that the entries must be in different files.

Moreover, Defendants' proposed construction reads out preferred embodiments from the specification. As noted above, the '370 Patent provides that the packet correlator may compare entries in a single log file, as denoted by "log(s)" and referring to the same figure notation 142. '370 Patent, 8:41-44. Because this disclosure specifically provide that the entries in a single log file may be compared, Defendants' proposed construction reads out a preferred embodiment as it requires entries in different log file to be compared. Thus, Defendants' proposal should be rejected because "a construction that reads out preferred embodiments, is rarely, if ever, correct." *Globetrotter Software, Inc. v. Elan Computer Grp., Inc.*, 362 F.3d 1367, 1381 (Fed. Cir. 2004) ("A claim interpretation that excludes a preferred embodiment from the scope of the claim is rarely, if ever, correct.") (citation omitted).

Claim Term	Plaintiff's Construction	Defendants' Construction
device in a communication link	device in a computer network	device in a communication path

Centripetal's construction is based on the teachings of the specification. Furthermore, for this complex low level security technology, it is appropriate to provide the jury the context given the technology at issue. Medvidovic Rebuttal Decl., ¶¶ 49-50; Medvidovic Opening Decl., ¶¶ 30-31. A device in this context is simply a device in a computer network. *Id.*

In contrast, Defendants' proposed construction should be rejected because it violates the doctrine of claim differentiation. Specifically, Defendants' construction imports "communication path" which is only recited in independent Claim 1, and imports them into the remaining independent claims which recite a communication link. With Defendants' proposed construction of a "communication path," there is no differentiation between the claims. Such tactics are erroneous, as different words in a patent are presumed to have different meanings. *See., e.g., Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119-20 (Fed. Cir. 2004) (different words have different meanings.); *Versa*, 392 F.3d at 1330 (each claim

in a patent has a different scope). Given the infirmities of Defendants’ proposed construction and the intrinsic support for Centripetal’s construction, Centripetal respectfully requests the Court to adopt its proposal.

Defendants repeat the argument in their brief that Centripetal’s constructions is the same for “device in a communication path” and “network device.” Defs’ Brief at 18. However, as demonstrated above in Section IIC regarding “network device,” this argument is incorrect because Centripetal construed “network device” to emphasize that the technology is focused on packet-level analysis and construed “device in a communication path” to demonstrate that the communication path form a computer network.

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
provision a device in a communication link interfacing a network device and a first/second network	changing a device from one state to another where the device is communicatively coupled to a network device and a first/second network	no construction needed/plain meaning

Centripetal’s construction provides the commonly understood meaning of “provision a device” to those of skill in the art, namely change a device from one state to another. Medvidovic Rebuttal Decl., ¶¶ 52-53; Medvidovic Opening Decl., ¶ 32. As set forth in Centripetal’s Opening Claim Construction Brief, Centripetal’s construction is consistent with the intrinsic record which is replete with examples in which devices change their state based on an updated configuration. Dkt. No. 106 at 10-11, 119; *see also* ‘370, Col. 3:11-19, 3:28-36, 13:54-60; claim 1 (“provisioning...a first tap with one or more rules configured to identify...packets”), 20, 22, 41, 43, 62, 74, 86, 98, 109, 120, 131, 140, 149, 158, 167, 176, 185, 187, 194, 201. Furthermore, this is a helpful definition for the jury to understand the concepts at hand and how the devices at issue operate. Medvidovic Rebuttal Decl., ¶¶ 52-53; Medvidovic Opening Decl., ¶ 32. As such, Centripetal’s construction provides a meaningful definition for this term based on the intrinsic record.

Defendants provide no construction for this term, asserting the “plain and ordinary” meaning applies, but without any explanation as to what that purported “plain and ordinary” meaning actually is. By avoiding what this term means, Defendants have failed to provide any meaningful argument. Defs’ Brief at 16-17. Instead of addressing how Defendants are interpreting the element, Defendants simply attack Defendants’ construction, asserting that Centripetal is “adding extraneous limitations” and disputing Centripetal’s interpretation of “provision.” These attacks, however, confirm that this claim term is contested. As such, it needs to be construed to avoid disputes later regarding the meaning of this term.

Defendants make a convoluted, and technically inaccurate, argument that rules (including rules that identify packets or log packets) cannot change the state of a device. *See* Defs Brief at 16-17. This is simply not true. As is commonly understood to those of skill in the art, a rule can change the state or configuration of a device. Medvidovic Rebuttal Decl., ¶¶ 52-53; Medvidovic Opening Decl., ¶ 32. For example, a device may be configured to forward packets based on a set of rules. *Id.* The same device may be configured to drop packets if the rules are changed. *Id.* The state of the device changes from forwarding packets to dropping them. *Id.* Accordingly, Defendants’ assertion that rules cannot change a device is contrary to the technology at issue in this case and the examples provided in the intrinsic record. Defendants did not provide any expert testimony for its assertion regarding Centripetal’s construction. Thus, Defendants’ assertion that rules cannot change a device is unsupported and contrary to the technology at issue and the intrinsic record.

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
identify the plurality of packets received/transmitted by the network device	determine the network-layer or transport-layer data contained within the plurality of packets received/transmitted by the network device	no construction needed/plain meaning

Centripetal’s construction is consistent with the specification and provides context to the claims. The specification states that network packets “may comprise network- or transport- layer

header information identifying their source as a network address associated with network device(s) 122.” *See* ‘370 Patent, Col. 5:8-18. Moreover, this construction is consistent with how one of ordinary skill in the art would identify packets received or transmitted by a network device. Specifically, one of skill in the art understands that reading an identifier in the header of a packet at the network-layer or the transport-layer layer identifies the packet. *See* Medvidovic Rebuttal Decl., ¶¶ 55-56; Medvidovic Rebuttal Decl., ¶ 33. Thus, Centripetal’s construction is based on the intrinsic and extrinsic evidence.

Defendants provide no construction for this term, notwithstanding that there is a dispute regarding the meaning of the term. Here, all Defendants do is repeat the claim element that is cited in Claim 22, without any explanation whatsoever what they believe is the alleged plain and ordinary meaning. For the same reasons described above with terms like “provision a device in a communication link interfacing a network device and a first/second network,” Defendants’ generic request without any explanation for the alleged “plain and ordinary meaning” is contrary to Federal Circuit precedent and should be rejected.

Defendants assert that additional information should be included in the definition of this claim term citing a portion of the specification which includes information from other layers of the OSI model. *See* Defs’ Brief at 20-21. But Defendants fail to acknowledge this term centers around transmitted packets and does not concern other layers of the OSI model. The relevant information for transmission of a packet is the information from the network and transport layer. Thus, Defendants’ arguments regarding other layers of the OSI model is not appropriate for the construction involving transmitted packets.

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
configured to cause the system/computing system to log packets	programming instructions that cause the system to generate a log file containing packet data	no construction needed/plain meaning

Centripetal’s construction, which is based on the intrinsic record as set forth in Centripetal’s Opening Claim Construction Brief, provides an useful definition for the jury. Dkt.

No. 106 at 21. Those of skill in the art recognize that to configure a system to log packets involves programming instructions that cause the system to generate a log file containing packet data. Medvidovic Rebuttal Decl., ¶¶ 58-59; Medvidovic Opening Decl., ¶¶ 34-35. This is consistent with the specification which provides numerous examples of log files, including a visual depiction of a log file as Figure 3. *See* ‘370 Patent, Figure 3, Col. 3:64-4:39, 6:5-27, 9:1-19 (discussing “log(s) 304”), 10:1-14, 12:4-16, 13:12-19. Moreover, Figure 1 demonstrates that the log is stored in memory, further emphasizing the creation of a log file that contains packet data. *See* ‘370 Patent, Fig. 1.

Defendants argue that “generating a log file” and “programming instructions” are not appropriate for the definition for this claim term. However, Defendants’ complaints about Centripetal’s construction is misleading because it distorts the technology at issue. Defendants fail to provide any explanation regarding how a system could be configured to log packets without generating a log file. Centripetal’s construction provides this explanation which is based on a fundamental understanding of how the ‘370 Patent operates and the embodiments described in the specification, as set forth in Centripetal’s Opening Claim Construction Brief. Dkt. No. 106 at 21. As such, it is the appropriate construction.

As with numerous other claim terms, Defendants fail to offer a construction, simply reciting plain and ordinary meaning, while not providing any explanation what Defendants believes is the plain and ordinary meaning. Creating a “black box” around the meaning of claim terms is exactly what claim construction is intended to avoid. Here, there is a dispute regarding its scope, apparent from Defendants’ disagreement with Centripetal’s construction. Given the dispute about the meaning of this term, Defendants have failed to meaningfully engage in the claim construction process, in violation of Federal Circuit precedent. *See Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1319 (Fed. Cir. 2016). Thus, Centripetal’s construction should be adopted.

#### **D. ‘722 PATENT**

Centripetal adopts Defendants’ proposed construction of network-threat indicators.

Claim Term	Plaintiff's Construction	Defendants' Construction
packet-filtering device	a device programmed to filter packets based on data associated with a packet	no construction needed/plain meaning

Centripetal's construction is consistent with the specification of the patent and provides context to the Court, non-technical experts and jury regarding the scope of the claim term. Centripetal provides the plain and ordinary meaning of this term, which Defendants dispute even though they also claim that the plain and ordinary meaning is appropriate. Given the apparent dispute, Centripetal explained the plain and ordinary meaning which Defendants failed to do which is fatal to its position. *See Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1319 (Fed. Cir. 2016). As discussed in Centripetal's opening brief, a packet-filtering device is a device that is programmed to filter packets based on data associated with a packet. *See, e.g.*, '722 Patent, 1:52-2:10; 3:44-4:4, 4:59-5:6, 5:19-24, 5:37-42, 5:49-67, 6:6-11, 6:25-26, 7:22-24, 9:14-22, 9:39-52, 10:23-28, 10:35-41, 11:3-14, 15:33-42, 15:53-16:34; Dkt. No. 106 at 23. Centripetal's straight forward construction should apply.

Defendants do not challenge the legitimacy of Centripetal's construction; rather, they argue that additional limitations of the claims should be imported into the construction of this term. *See* Defs' Brief at 8-9. As a preliminary matter, Defendants' argument that the construction of a particular term must include the limitations of the claims runs afoul Federal Circuit precedent, prohibiting redundancy in claim construction. *See Apple*, 842 F.3d at 1237-38 (construing a claim term to include features of that term already recited in the claims would make those expressly cited feature redundant). Moreover, Centripetal's construction does not read out any of the claim elements because it specifies that the packet-filtering device filters packets based on data associated with a packet. This data can include packet-filtering rules and corresponding criteria as set forth in the claims. Thus, Centripetal's construction covers all embodiments in the specification and aligns with the claims.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
packet-filtering rules	condition or set of conditions that when satisfied cause a computing device to filter packets based on data associated with a packet	(i) packet-identifying criteria and (ii) an operator to be performed on the identified packets

Centripetal's construction provides a complete definition for "packet-filtering rule." Specifically, as noted above, a "rule" is understood to mean a condition or set of conditions that, when satisfied, cause a specific action to occur. Here, a packet-filtering rule is a specific type of rule that causes a computing device to filter packets based on data associated with a packet. Medvidovic Rebuttal Decl., ¶ 64; Medvidovic Opening Decl., ¶¶ 38-39. Centripetal's consistent approach to claim construction is based on the intrinsic record. Dkt. No. 106 at 23-25; *see also* '722 Patent, 1:45-55, 4:10-18, 4:59-64, 5:7-13, 6:12-24.

Defendants' proposed construction introduces redundancy into the claims. Defendants' arguments confirms as much. For example, the primary support for Defendants' proposed construction is the limitations recited in Claim 1. As explained above, incorporating limitations from the claims into a construction is erroneous as a matter of law. *See Apple*, 842 F.3d at 1237-38 (construing a claim term to include features of that term already recited in the claims would make those expressly cited feature redundant). Additionally, it is not helpful for the jury who would be forced to apply the construction in the claim language, which repeats itself. *See, e.g.*, '722 Patent, claim 1 ("responsive to a determination...that the first packet satisfies one or more criteria" then "applying...an operator specified by the packet-filtering device").

Even worse, Defendants' proposed construction is nearly identical to its construction of "rule." As noted above, Defendants argue "rule" should be construed as "(i) packet-identifying criteria and (ii) a function to be performed on the identified packets." Compared to the definition of packet-filtering rule, Defendants merely replaced "function" with "operator" and provide no meaning to the term "packet-filtering." As a result, Defendants failed to provide meaning to the entire claim term in dispute and is improper. *See* Defs' Brief at 4-5.

Finally, Defendants take the inconsistent position that "condition" is an appropriate definition for the term "rule," but is not an appropriate definition for the term "packet-filtering



rule.” *Compare* Defs’ Brief at 5 and 14. Defendants’ inconsistency in its own briefing showcases the infirmities in its position and demonstrates that Centripetal’s construction is the correct definition for the term.

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
interface	plain and ordinary meaning	a display visible to the user that allows a user to provide input

No construction is required for interface as the term is already defined in the context of the claims. Specifically, Claim 1 of the ‘722 Patent provides for “causing, by the packet-filtering device and in an interface, display of the information in at least one portion of the interface.” Because the claims set forth the plain and ordinary meaning of interface, there is no need for the Court to construe it.

There is nothing that requires the interface to be visible to the user. Thus, Defendants’ proposed construction imports unnecessary limitations into the claims when the claims themselves define what the interface is. Defendants provide no basis for construing this straightforward and well understood term and its construction should be rejected.

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
Operator	an adjustable instruction that causes the packet filtering device to either prevent or allow a packet to continue to a destination	function to either block a packet corresponding to criteria or allow it to continue to its destination

Centripetal’s construction is consistent with the specification and provides context to the asserted claims. As discussed in Centripetal’s Opening Claim Construction Brief, the intrinsic record describes that the packet-filtering device can reconfigure the operator from allowing packet to preventing packets, and vice versa. *See* ‘722 Patent, 2:5-10; 11:1-10; *see also* Dkt. No. 106 at 26-27.

Defendants largely do not dispute Centripetal’s construction and only argue that Centripetal’s construction is redundant because the claims contain the word “modifying.” *See* ‘722 Patent, Claim 1 (“modifying, by the packet-filtering device, at least one operator....”). Defendants’ argument misses the mark because at issue here is the operator, which is an

adjustable instruction. According to the claims, this adjustable instruction can be modified.

Thus, there is no redundancy as modifying and adjustable are different. Modifying is a verb and the step performed by the system, where adjustable is a characteristic of the system. Thus, Centripetal's construction is not redundant of any claim limitation.

Defendants' proposed construction is redundant because it repeats the exact words as the claim. Specifically, Claim 1 provides that the operator can be applied to "packets corresponding to the one or more criteria." *See id.*, Claim 1. Defendants' proposed construction is redundant, as it contains the same limitations recited in the claim, which does not provide a meaningful definition for this term. *See* Defs' Brief at 6-7; *see also Apple*, 842 F.3d at 1237-38. Because Centripetal's construction provides a meaningful definition, it should be adopted.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
responsive to a determination by the packet-filtering device that the first packet satisfies one or more criteria, specified by a packet-filtering rule of the plurality of packet-filtering rules, that correspond to one or more network-threat indicators of the plurality of network-threat indicators	if the packet-filtering device determines the first packet meets one or more conditions associated with one or more network threat indicators from a packet filtering rule	no construction needed/plain meaning

Centripetal's construction for this term is essentially un rebutted. Defendants' brief on this claim term is nothing more than three sentences, which are unsupported attorney argument. Defs' Brief at 12. Defendants do not suggest anywhere that Centripetal's construction is inappropriate. All that Centripetal's construction provides is the plain and ordinary meaning of a technical claim term that will assist the jury in understanding this aspect of the complex technology at issue. Medvidovic Rebuttal Decl., ¶ 66; Medvidovic Opening Decl., ¶ 43. As there is no genuine dispute, Centripetal's construction should be adopted.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
communicating, by the packet-filtering device, information from the packet-filtering rule that identifies the one or more network-threat indicators, and data indicative that the first packet was allowed to continue toward the destination of the first packet	causing a packet-filtering device to generate and communicate a record that identifies (1) a network threat indicator based on a rule and (2) data that indicates that the first packet was allowed to continue toward the destination	no construction needed/plain meaning

For this claim term, Centripetal's construction is virtually un rebutted as Defendants primarily argue that Centripetal engaged in "redrafting" without any basis or explanation. Centripetal's construction provides appropriate and necessary context and clarity for this lengthy claim term in the context of the complex technology at hand. Given the intrinsic support for Centripetal's construction, as explained in its Opening Brief, Centripetal's construction should be adopted. *See* Dkt. No. 106 at 28.

Once again, Defendants provide no explanation what their alleged "plain and ordinary meaning" actually is, suggesting that Defendants are not actually using the plain and ordinary meaning. Because Defendants provide no explanation, their proposed construction should be rejected. In passing, Defendants argue that the word "record" is not found in the patent. However, Defendants do not dispute that "record" is appropriate, or that the plain and ordinary meaning of the "communicating..." terms includes generating and communicating a record, particularly when the claim term specifies that information is communicated that includes network threat indicator and data indicating the first packet was allowed to continue toward the destination. One of skill in the art would recognize that this information is communicated in the form of a record based on the teaching of the '722 Patent. *See, e.g.*, Col. 6:13-54; 6:59-7:11; 7:48-8:7; 8:27-39, 11:16-37; 11:45-59; 12:34-57; 13:3-14; 16:8-33; Dkt. No. 106 at 27-28. Thus, Centripetal's un rebutted construction should be adopted.

<b>Claim Term</b>	<b>Plaintiff's Construction</b>	<b>Defendants' Construction</b>
modifying, by the packet-filtering device, at least one operator specified by the packet-filtering rule to reconfigure the packet-filtering device to prevent packets corresponding to the one or more criteria from continuing toward their respective destinations	modifying the state of the packet-filtering device to cause an adjustable instruction to prevent a packet from continuing toward its destination	no construction needed/plain meaning

Similar to the two terms above, Defendants largely do not contest Centripetal's construction for this "modifying..." term. Centripetal's construction logically flows from its previous constructions because it includes changing the packet-filtering device from an allow state to a prevent state using an adjustable instruction. This is consistent with Centripetal's construction of operator which specifies an adjustable instruction. Centripetal's construction is consistent with the intrinsic record, as set forth in Centripetal's opening brief (Dkt. No. 106 at 28-29) and will assist the jury in understanding the complex technology at hand, its construction should be adopted.

Defendants claim that "the states of the packet-filtering device" and an "adjustable instruction" are new limitations. Defs' Brief at 11. This is incorrect. Centripetal provides the plain and ordinary meaning for "reconfiguring the packet-filtering device" as changing the state of the packet-filtering device and that the understood meaning of "operator" is an adjustable instruction which is consistent with Centripetal's other claim constructions. Because Defendants have no credible arguments against Centripetal's construction or description of what they believe the plain and ordinary meaning is for this term, the Court should adopt Centripetal's position.

Claim Term	Plaintiff's Construction	Defendants' Construction
user <sup>6</sup>	plain and ordinary meaning	"person (e.g., administrator)"

Centripetal's proposed construction should be adopted because this plain term requires no construction.

Defendants' proposed construction should be rejected because it is inconsistent with the teachings of the specification. The term "user" is not limited in the specification to a "person (e.g., administrator)." In fact, the specification generally describes a user as anything that specifies a time interval, modifies an option, or operates a device. *See. e.g., '722 Patent, 7:52-62, 9:33-44, 10:15-18, 28-34.* A person or process can perform these functions within the teachings of the specification. Accordingly, Defendants' proposed construction should be rejected and this term should be given its plain and ordinary meaning.

Defendants' proposal seeks to narrow the claim term without a clear disavowal in the intrinsic record. *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365-66 (Fed. Cir. 2012) (plain and ordinary meaning applies unless patentee acts as lexicographer or patentee disavows scope of claim term). Each of the citations that Defendants' provide in their brief begins with "may" indicating that the embodiment is permissible, but not required. Accordingly, Defendants fail to meet their burden that the claim term should be narrowed to foreclose an embodiment that allows for a user to be a process.

### III. CONCLUSION

For the foregoing reasons, Centripetal respectfully requests the Court adopt Centripetal's proposed constructions for the above claim terms.

<sup>6</sup> Due to an inadvertent error, Centripetal assumed that "user" was no longer a term at issue. Before briefing began, Centripetal sent a chart to Defendants with all of the proposed terms and their constructions to ensure that the parties understood their respective positions with regard to the claim terms. The chart did not include the term "user" and Centripetal was not aware that the term was still at issue until it received Defendants' brief.

Dated: May 3, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send notification of electronic filing to:

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