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October 18, 2018

## **VIA ELECTRONIC FILING**

The Honorable Lisa R. Barton  
Secretary to the Commission  
U.S. International Trade Commission  
500 E Street, S.W., Room 112  
Washington, DC 20436

RE: In the Matter of *Certain Digital Video Receivers and Related Hardware and Software Components*, Inv. No. 337-TA-1103

Dear Secretary Barton:

Pursuant to Administrative Law Judge MaryJoan McNamara's Ground Rule 1.10, Complainants Rovi Corporation, Rovi Guides, Inc., Rovi Technologies Corp., and Veveo, Inc. (collectively, "Rovi") respectfully submit an original copy of the nonconfidential *Markman* Teleconference Hearing Transcript, taken on October 5, 2018.

Thank you for your attention in this matter.

Sincerely,

/s/ Douglas A. Cawley  
Douglas A. Cawley

tjw  
Enclosure

**McKool Smith**  
A Professional Corporation • Attorneys  
Austin | Dallas | Houston | Los Angeles | Marshall | New York | Silicon Valley | Washington, DC

CERTAIN DIGITAL VIDEO RECEIVERS  
AND RELATED HARDWARE AND  
SOFTWARE COMPONENTS

Inv. No. 337-TA-1103

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on October 18, 2018, she caused the foregoing *Markman* Teleconference Hearing Transcript to be served upon the following parties as indicated below:

The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street S.W., Room 112 Washington, D.C. 20436	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via Electronic Filing
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CERTAIN DIGITAL VIDEO RECEIVERS  
AND RELATED HARDWARE AND  
SOFTWARE COMPONENTS

Inv. No. 337-TA-1103

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Date: October 18, 2018

/s/ Tanya J. Wood

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UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

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)  
In the Matter of )  
)  
CERTAIN DIGITAL VIDEO ) Inv. No. 337-TA-1103  
RECEIVERS AND RELATED )  
HARDWARE AND SOFTWARE )  
COMPONENTS )  
\_\_\_\_\_)

TELECONFERENCE  
CONSTRUCTION OF TERMS  
October 6, 2018  
MARYJOAN McNAMARA  
Administrative Law Judge

Transcript of Teleconference with Administrative Law Judge  
Conducted on October 5, 2018

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APPEARANCES VIA TELECONFERENCE

Appearing on behalf of Complainants, Rovi:

MCKOOL SMITH  
Douglas Cawley, Esq.  
Christopher Bovenkamp, Esq.  
Lawrence Hadley, Esq.  
300 Crescent Court, Suite 1500  
Dallas, Texas 75201  
214.978.4000

Appearing on behalf of Respondent, Comcast:

LATHAM & WATKINS  
Douglas Lumish, Esq.  
Bert C. Reiser, Esq.  
140 Scott Drive  
Menlo Park, CA 94025  
650.463.2633

Also Present: Mr. Mike Buckler

1 ADMINISTRATIVE LAW JUDGE: All right.  
2 So I understand that our court reporter this  
3 afternoon is Marilyn Morgan. Are you there,  
4 Ms. Morgan?

5 COURT REPORTER: I am here. Thank you,  
6 Your Honor.

7 ADMINISTRATIVE LAW JUDGE: You're  
8 welcome. Listen, if you have any problems  
9 with understanding or hearing whatever I'm  
10 saying, please feel free to interrupt and let  
11 me know. I'm on a cell phone, so I'll try and  
12 stay near the antenna so that it can pick me  
13 up from the microphone. Just let me know.  
14 Don't hesitate to jump in.

15 COURT REPORTER: Okay.

16 ADMINISTRATIVE LAW JUDGE: Since I'm not  
17 really expecting discussion here, although  
18 there may be, if you can't hear me again, let  
19 me know. That's fine.

20 Now, I understand from Rovi, at least as  
21 to speakers, it will be Douglas Cawley. Are  
22 you there, Mr. Cawley?

23 MR. CAWLEY: Yes, ma'am, I am.

24 ADMINISTRATIVE LAW JUDGE: Okay. Good.  
25 And our listeners will be Mr. Larry Hadley for

1 the 011 patent. Mr. Hadley, are you there?  
2 We'll take this one first.

3 MR. HADLEY: Yes, Your Honor, I'm here.

4 ADMINISTRATIVE LAW JUDGE: Okay. And  
5 then it will be Chris Bovenkamp for the 585  
6 and 741 patents; is that correct?

7 MR. BOVENKAMP: Right. I'm sorry I  
8 missed your call.

9 ADMINISTRATIVE LAW JUDGE: All right.  
10 And, Mr. Bovenkamp, just so that you know, I  
11 am going to take the 011 patent first as  
12 you-all requested. So we'll get that one out  
13 of the way first.

14 Then we have from Comcast, our speaker  
15 is Doug Lumish. Mr. Lumish, are you there?

16 MR. LUMISH: Yes, Your Honor, I'm here.

17 ADMINISTRATIVE LAW JUDGE: Okay. Very  
18 good. And our listener is Bert Reiser.  
19 Mr. Reiser, are you there?

20 MR. LUMISH: He might be on mute. I  
21 know he is -- he instant messaged me that he's  
22 on the line, but I think he's probably on  
23 mute.

24 ADMINISTRATIVE LAW JUDGE: Gotcha.  
25 Okay. And Mike Buckler is also with me on the

1 call. Mike, are you here?

2 MR. BUCKLER: I'm here, Judge.

3 ADMINISTRATIVE LAW JUDGE: Okay. Thanks  
4 a lot.

5 All right. So, as you know, I asked for  
6 this telephone conference so that I could  
7 construe Markman terms. I'm sorry we're doing  
8 it this way. We are going to -- I am going to  
9 get out an order, a written order, that  
10 contains some of what I will be providing  
11 today as the rationale. But I'm afraid that  
12 I've had a series of cases, one after the  
13 other, on a combination of IDs and hearings,  
14 evidentiary hearings. And you understand, I  
15 think. Again, I'm sorry to have to do it this  
16 way, but I wanted you to have it.

17 We can talk, then -- we can talk on  
18 Wednesday, unless I get out some of the other  
19 orders to you on the motions in limine and  
20 high priority objections. We can talk about  
21 whether you need to amend any of the reports  
22 and so forth, because I recognize we're  
23 getting this to you so late.

24 So I'm going to start with U.S. patent  
25 No. 779011, which I will reference this as the



1 011 patent. Is everybody with me?

2 MR. CAWLEY: We are, Your Honor.

3 MR. LUMISH: Yes, Your Honor.

4 ADMINISTRATIVE LAW JUDGE: Okay. So the  
5 first claim term that I'm construing, which  
6 includes claims 1 and 9, is the preamble.

7 Now, I understand that Rovi's proposed  
8 construction was that the preamble is not  
9 limiting, while Comcast's proposed  
10 construction was the preamble is limiting.

11 First of all, as you know, in terms of a  
12 rationale, preamble language is subject to a  
13 rebuttable presumption that it is not  
14 limiting. And I've got case cites for that.

15 That said, I'm adopting the following  
16 construction: The preamble is limiting, but  
17 it limits only the environment in which the  
18 invention operates and does not require  
19 additional steps or components in the claimed  
20 invention.

21 And I'm relying on the case of Advanced  
22 Software Design Corp. v. Fiserve, Inc.,  
23 641 F.3d 1368, 1375 (Fed. Cir. 2011).

24 Did everybody understand that?

25 MR. CAWLEY: Yes, Your Honor.

1 ADMINISTRATIVE LAW JUDGE: Okay. Now, I  
2 have a number of other case cites. And,  
3 again, we'll provide that to you in writing.  
4 And I recognize that the parties took  
5 different positions on whether the claims were  
6 limiting.

7 Rovi contended that each preamble to  
8 claims 1 and 9 were not limiting; while, in  
9 the alternative, Rovi asserted that each  
10 preamble limits only the environment in which  
11 the invention operates.

12 Comcast argued that each preamble is  
13 limiting because it provides essential  
14 structure, which is necessary to give life to  
15 the claims. However, Comcast did not address  
16 whether the preamble limits only the  
17 environment of the invention or,  
18 alternatively, recites additional claim  
19 limitations in the form of steps or  
20 components.

21 So you have my ruling on that. We'll  
22 provide more rationale in writing.

23 Okay. So I'm going now to the second  
24 claim term. It's in the ninth claim. And the  
25 term is as follows -- and I'm going to quote

1 it slowly, Ms. Morgan.

2 "A computer readable medium comprising  
3 instructions for causing a computer system  
4 to," close quote.

5 Just let me know if you got that or if I  
6 went too quickly.

7 COURT REPORTER: I got it. Thank you.  
8 I don't think I got the last word -- "for  
9 causing a computer system to," and then I  
10 heard "close quote."

11 ADMINISTRATIVE LAW JUDGE: Yes, that's  
12 correct.

13 COURT REPORTER: Okay. Thank you.

14 ADMINISTRATIVE LAW JUDGE: You're  
15 welcome.

16 I'll just repeat it just to make sure  
17 you have it. It's, quote, "A computer  
18 readable medium comprising instructions for  
19 causing a computer system to," close quote.

20 COURT REPORTER: Thank you.

21 ADMINISTRATIVE LAW JUDGE: You're  
22 welcome.

23 Now I am not going to repeat each of  
24 Rovi's and Comcast's proposed constructions.  
25 You and I know what they are; but in the

1 written document which you'll receive, it will  
2 be in chart form, which I've been using in the  
3 last couple of years, so that you can see side  
4 by side your proposed constructions and then  
5 what I chose to adopt.

6 So here is the adopted construction:  
7 This preamble is limiting as explained above.  
8 That is, it limits only the environment in  
9 which the invention operates, again, according  
10 to the same case precedent that I quoted  
11 above.

12 The proper construction is: One  
13 computer readable medium or more than one  
14 computer readable media containing  
15 instructions for causing the computer system  
16 to conform the rescinded steps. That is what  
17 is being adopted.

18 The rationale for this in brief is that  
19 claim 9 covers the system, not a single  
20 apparatus. The claimed system indexes  
21 information it receives as search query from a  
22 user and orders items on a display device.

23 Comcast's position, which requires that  
24 one medium in the system, quote, "stores all  
25 the instructions for causing" is inconsistent

1 with the specification which allows  
2 configurations on various computer readable  
3 media with different media performing  
4 different claimed steps. And then I provide  
5 examples.

6 And, again, there's a fairly lengthy  
7 rationale which cites to the various parts of  
8 the patent specification by column and line  
9 number or to the figures as may be  
10 appropriate.

11 So did everybody understand what I'm  
12 adopting as the construction?

13 MR. HADLEY: Your Honor, this is Larry  
14 Hadley. Can I ask you to, please, just repeat  
15 the entire construction one more time to make  
16 sure I jotted it down accurately?

17 ADMINISTRATIVE LAW JUDGE: Yes, of  
18 course. Let me repeat that.

19 So here's the construction: I've said  
20 the preamble is limiting, but it limits only  
21 the environment -- this is more of a  
22 background to it -- an environment in which  
23 the invention operates and does not recite  
24 additional steps or components in the claimed  
25 invention.

1           The adopted construction is -- hold on.  
2       I'm sorry. I scrolled to a different page.  
3       Just a second. I'm sorry.

4           Okay. The proper construction is,  
5       quote, "One computer readable medium or more  
6       than one computer readable media containing  
7       instructions for causing the computer system  
8       to perform the recited steps."

9           MR. HADLEY: Thank you, Your Honor.

10          ADMINISTRATIVE LAW JUDGE: Were you able  
11       to get that, Mr. Cawley?

12          MR. CAWLEY: I believe so, Your Honor.

13          ADMINISTRATIVE LAW JUDGE: Okay. Good.  
14       Were you able to get that, Mr. Lumish?

15          MR. LUMISH: Yes, Your Honor.

16          ADMINISTRATIVE LAW JUDGE: Okay. Good.  
17       I just want to be sure.

18          Again, anybody feel free to jump in if  
19       I'm going too quickly or if there's something  
20       where I for some reason fade out.

21          Okay. So the next claim term of the 011  
22       patent is contained in claims 1 and 9. The  
23       term is "items".

24          Ms. Morgan, that's the only term we're  
25       considering, one word, the word "items."

1 COURT REPORTER: Okay. Thank you.

2 (Technical difficulty)

3 ADMINISTRATIVE LAW JUDGE: Let me try  
4 again. Ms. Morgan, this is for you. So let  
5 me know.

6 COURT REPORTER: Okay.

7 ADMINISTRATIVE LAW JUDGE: The  
8 information units, each with the name  
9 comprising one or more words.

10 COURT REPORTER: Okay. I have that.

11 ADMINISTRATIVE LAW JUDGE: Okay. Good.

12 Again, what I started to say, this is  
13 just part of the rationale. Comcast wanted to  
14 narrow this term to search query results only.  
15 That was not supported by specification.  
16 Again, I have a much longer rationale which  
17 we'll be providing in writing.

18 All right. So we're going to the fourth  
19 claim term for construction now for the 011  
20 patent, and it is also found in claims 1 and  
21 9. The term is "directly mapped."

22 Ms. Morgan, that's m-a-p-p-e-d. It's  
23 just two words. The term is "directly  
24 mapped."

25 COURT REPORTER: Thank you.

1 ADMINISTRATIVE LAW JUDGE: You're  
2 welcome.

3 Okay. Now, we recognize that the term  
4 "directly mapped" is not defined in the  
5 specification. That said, the language of the  
6 specification tells us what it is. And this  
7 is the construction.

8 Ms. Morgan, I'll start now.

9 Quote, "Each alphanumeric character of a  
10 prefix substring" -- that's s-u-b-s-t-r-i-n-g,  
11 one word -- "associated with an item is  
12 matched with its corresponding numeric  
13 equivalent on an overloaded keypad."

14 Ms. Morgan, let me know if you need me  
15 to repeat that if you have a problem.

16 COURT REPORTER: I got it. Thank you.

17 ADMINISTRATIVE LAW JUDGE: Okay. Again,  
18 I will provide the explanation and rationale  
19 in writing. But, again, we found that Comcast  
20 wanted to limit this term to search query,  
21 which just was not correct.

22 So in any event, there is more to the  
23 explanation than that, but those are the terms  
24 for the -- the disputed terms for the 011  
25 patent, which I've construed.



1 Does anybody have any questions?

2 MR. HADLEY: Your Honor, I'm sorry to do  
3 this, but would you mind reading that  
4 construction one more time just for --

5 ADMINISTRATIVE LAW JUDGE: Not a  
6 problem. Not a problem. This is not the  
7 ideal way to do this, and I understand that.

8 It's, "Each alphanumeric character of a  
9 prefix substring associated with an item is  
10 matched with its corresponding numeric key  
11 equivalent on an overloaded keypad."

12 MR. HADLEY: Thank you very much, Your  
13 Honor. I have it now.

14 ADMINISTRATIVE LAW JUDGE: Okay. Very  
15 good.

16 So at this point, we're going on to the  
17 585 first and then the 741 patents.

18 So I gather, Mr. Hadley, it's time for  
19 Mr. Bovenkamp to step in?

20 MR. HADLEY: That's correct, Your Honor.  
21 And I will drop off in accordance with your  
22 order.

23 ADMINISTRATIVE LAW JUDGE: Okay. Very  
24 good. And then just -- I'm sure we'll know as  
25 soon as he's joined.

1 MR. CAWLEY: He has joined, Your Honor.

2 ADMINISTRATIVE LAW JUDGE: Okay. Very  
3 good. All right.

4 So now I'm going to U.S. patent  
5 No. 7827585, and I'm going to reference it as  
6 the 585 patent.

7 So the first claim term I am construing  
8 is to be found in claims 1, 8, 15, and 22.  
9 And the term that is being construed is,  
10 quote, "random access digital storage device."

11 Ms. Morgan, were you able to get that?

12 COURT REPORTER: Yes, Your Honor.

13 ADMINISTRATIVE LAW JUDGE: Okay. Good.

14 The construction that I'm adopting is as  
15 follows: Quote, "A digital storage device  
16 that can access memory locations in a  
17 nonsequential manner," close quote.

18 Did everyone hear that?

19 MR. BOVENKAMP: Could we hear it again,  
20 Your Honor?

21 ADMINISTRATIVE LAW JUDGE: Yes, of  
22 course.

23 Okay. I'll give it again. Quote, "A  
24 digital storage device that can access memory  
25 locations in a nonsequential manner."

1 MR. BOVENKAMP: Thank you, Your Honor.

2 ADMINISTRATIVE LAW JUDGE: Did everyone  
3 get that?

4 MR. LUMISH: Yes, Your Honor.

5 ADMINISTRATIVE LAW JUDGE: You have to  
6 identify who's speaking so Ms. Morgan and I  
7 both know.

8 MR. LUMISH: I'm sorry. That was Doug  
9 Lumish, Your Honor. I did get it.

10 ADMINISTRATIVE LAW JUDGE: Okay. Very  
11 good.

12 MR. CAWLEY: And Rovi got it too.

13 ADMINISTRATIVE LAW JUDGE: Okay. Very  
14 good. Thank you.

15 All right. So I'm going on to the next  
16 construction. It is the second claim term  
17 that is disputed in this patent, and it is  
18 found in claim No. 8. Again, the term to be  
19 construed is "preamble" or actually -- so this  
20 is adopted -- I'm sorry, go ahead.

21 Ms. Morgan, did you get that?

22 COURT REPORTER: Yes. You said, Again,  
23 the term to be construed is "preamble" or  
24 actually -- so this is adopted.

25 ADMINISTRATIVE LAW JUDGE: Okay. So

1 this is what is being adopted.

2 Hold on. I just shifted pages.

3 This is the construction: The preamble  
4 is limiting, but it limits only the  
5 environment in which the invention operates  
6 and does not require additional steps or  
7 components in the claimed invention.

8 Were you able to get that, Ms. Morgan?

9 COURT REPORTER: Yes, I did. Thank you.

10 ADMINISTRATIVE LAW JUDGE: All right.

11 Mr. Cawley?

12 MR. CAWLEY: Yes, Your Honor. We got  
13 it.

14 ADMINISTRATIVE LAW JUDGE: Okay. Good.

15 Mr. Lumish?

16 MR. LUMISH: Yes, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: Okay. Good.

18 All right.

19 So the next claim term that is being  
20 construed is the third claim term for this  
21 patent 585, and it is found in claim terms 1,  
22 8, 15, and 22. The term to be construed is,  
23 quote, "interactive television program guide,"  
24 close quote.

25 Ms. Morgan, was that clear for you?

1 COURT REPORTER: That was clear. Thank  
2 you.

3 ADMINISTRATIVE LAW JUDGE: You're  
4 welcome.

5 Okay. The term that I'm adopting -- I'm  
6 sorry, the construction I am adopting is as  
7 follows: Quote, "An application that  
8 generates program information for display on  
9 user television equipment and that allows  
10 users to navigate through and interact with  
11 television program listings based on user  
12 commands," close quote.

13 MR. CAWLEY: Could we hear it again,  
14 Your Honor?

15 ADMINISTRATIVE LAW JUDGE: Of course,  
16 you may. Okay. Let me try it again.

17 Quote, "An application that generates  
18 program information for display on user  
19 television equipment and that allows users to  
20 navigate through and interact with television  
21 program listings based on user commands,"  
22 close quote.

23 Okay. Ms. Morgan, was that clear?

24 COURT REPORTER: That was clear. Thank  
25 you.

1 ADMINISTRATIVE LAW JUDGE: You're  
2 welcome.

3 Mr. Cawley?

4 MR. CAWLEY: Yes, we got it, Your Honor.

5 ADMINISTRATIVE LAW JUDGE: Mr. Lumish?

6 MR. LUMISH: I got it all the way up to  
7 "interact with," Your Honor. If you could  
8 repeat the last ten or so words back, I would  
9 appreciate it.

10 ADMINISTRATIVE LAW JUDGE: Not a  
11 problem. I'll repeat the whole thing.

12 "An application that generates program  
13 information for display on user television  
14 equipment and that allows users to navigate  
15 through and interact with television program  
16 listings based on user commands."

17 MR. LUMISH: Thank you, Your Honor.

18 ADMINISTRATIVE LAW JUDGE: You're  
19 welcome. Okay. Very good. That just now,  
20 for purposes of this written record, was  
21 Mr. Lumish.

22 Okay. So the next claim term and the  
23 fourth term to be construed in this patent is  
24 found in claims 1 and 8. The claim term is,  
25 quote, "implemented on user television

1 equipment," close quote.

2 Okay. Ms. Morgan, do you have that?

3 COURT REPORTER: I have it. Thank you.

4 ADMINISTRATIVE LAW JUDGE: You're  
5 welcome. Okay. So this is the adopted  
6 construction: Quote, "implemented at least in  
7 part at a user site on television equipment  
8 for receiving and processing television  
9 program listings and program data," close  
10 quote.

11 Let me repeat that. Quote, "implemented  
12 at least in part at a user site on television  
13 equipment for receiving and processing  
14 television program listings and program data,"  
15 close quote.

16 MR. CAWLEY: Can we get it one more  
17 time, Your Honor?

18 ADMINISTRATIVE LAW JUDGE: Of course. Is  
19 that Mr. Cawley or Mr. Lumish?

20 MR. CAWLEY: Yes, Mr. Cawley.

21 ADMINISTRATIVE LAW JUDGE: Okay. One  
22 more time. Quote, "implemented at least in  
23 part at a user site on television equipment  
24 for receiving and processing television  
25 program listings and program data," close

1 quote.

2 MR. CAWLEY: Thank you, Your Honor.

3 Rovi got that.

4 ADMINISTRATIVE LAW JUDGE: Okay. Very  
5 good. Mr. Lumish?

6 MR. LUMISH: Yes, Your Honor, I have it.

7 ADMINISTRATIVE LAW JUDGE: Ms. Morgan?

8 COURT REPORTER: Yes, Your Honor.

9 ADMINISTRATIVE LAW JUDGE: Okay. Good.

10 All right.

11 So the next claim term that I am  
12 construing is the fifth term, disputed term,  
13 that the parties identified for this patent or  
14 actually what was remaining. And it is found  
15 in claims 1, 8, 15, and 22.

16 The claim term I am construing is as  
17 follows: Quote, "a storage setting configured  
18 to control how programs are/the program is to  
19 be digitally stored in context of providing  
20 the user with an opportunity to select at  
21 least one storage option for storing a program  
22 to be recorded wherein at least one storage  
23 option relates to at least one storage setting  
24 configured to control how programs are to be  
25 digitally stored on a random access digital



1 storage device," close quote.

2 I know that was a long one, Ms. Morgan.

3 Do you need me to repeat it?

4 COURT REPORTER: I don't think so. I  
5 think I have it.

6 ADMINISTRATIVE LAW JUDGE: Wow. Okay.  
7 Very good. Anyone else?

8 MR. BUCKLER: Yes. This is Mr. Buckler.  
9 I just want to jump in. I think the actual  
10 term is this first article you just read, not  
11 the entire thing, the first quoted section.

12 ADMINISTRATIVE LAW JUDGE: Okay. Well,  
13 the first quoted section actually, then, is,  
14 "a storage setting configured to control how  
15 programs are/the program is to be digitally  
16 stored."

17 MR. BUCKLER: Perfect.

18 ADMINISTRATIVE LAW JUDGE: That's the  
19 first quoted section. Okay.

20 So this is the adopted construction, and  
21 this is a little bit of the explanation. This  
22 phrase is not a means-plus-function term.

23 This is the construction: Quote,  
24 "storage setting configured to control how  
25 programs are/the program is to be digitally

1 stored," close quote.

2 Ms. Morgan --

3 COURT REPORTER: Yes, Your Honor.

4 ADMINISTRATIVE LAW JUDGE: -- did you  
5 get it?

6 COURT REPORTER: I did.

7 ADMINISTRATIVE LAW JUDGE: Okay.

8 Very good.

9 Mr. Cawley?

10 MR. CAWLEY: Could we hear it one more  
11 time, Judge?

12 ADMINISTRATIVE LAW JUDGE: Sure. Quote,  
13 "storage setting configured to control how,  
14 bracket, programs are/the program is, bracket,  
15 to be digitally stored," close quote.

16 MR. CAWLEY: Thank you, Judge.

17 ADMINISTRATIVE LAW JUDGE: You're  
18 welcome. Was that Mr. Cawley?

19 MR. CAWLEY: Yes, Your Honor.

20 ADMINISTRATIVE LAW JUDGE: Okay. If you  
21 would kindly identify yourselves before you  
22 speak so that the transcript is clear, that  
23 would be great.

24 And what we've determined is that the  
25 phrase is not a means-plus-function term.

1           Okay. The next term, the sixth claim  
2 term, for this patent, which is to be found in  
3 claims 15 and 22, is the word, quote,  
4 "circuitry," close quote.

5           Now, there's more of an explanation to  
6 this. But, first of all, I determined that  
7 this phrase or the word that it's -- or the  
8 phrase it's found in is not a  
9 means-plus-function term.

10          I think, as you know, also, "circuitry"  
11 is a fairly general word that's used in a  
12 variety of engineering contexts. So even  
13 though I'm breaking my own requirement that  
14 you should provide a meaning instead of using  
15 plain and ordinary meaning, the fact is that  
16 in this case, it does have a plain and  
17 ordinary meaning. But in this case, it has to  
18 do with processing.

19          And I think the rationale will explain  
20 in more detail why we've gone in this  
21 direction. But, quite simply, as you all  
22 know, the term "circuitry" is found in so many  
23 patents. And it can be software circuitry; it  
24 can be hardware circuitry; it can be  
25 programmed or designed. Circuitry can be

1     programmed or designed in a variety of  
2     different ways to perform different functions.

3             And so what we're doing here is leaving  
4     it to a general meaning but making sure that  
5     it comports with the Federal Circuit  
6     definition as having a generic function of  
7     processing, receiving, storing, without  
8     necessarily having specialized programming.

9             Does everybody understand that, and did  
10    everybody get that?

11            MR. CAWLEY: This is Mr. Cawley. And,  
12    yes, we did, Your Honor.

13            MR. LUMISH: Yes, Your Honor, we have it  
14    as well.

15            ADMINISTRATIVE LAW JUDGE: Okay. Very  
16    good. All right.

17            So we're on to the last of the patents  
18    that we've narrowed down to. And what I want  
19    to say to both parties, congratulations on  
20    narrowing this. Believe me, I think it's  
21    going to be -- I shouldn't use that phrase.  
22    Sorry. Forget I ever used that phrase.

23            I think you'll find it will be a much  
24    better evidentiary hearing. You'll have much  
25    more time to really provide very good direct

1 testimony as well as enough time to provide  
2 really a comprehensive cross.

3 One of the things you should think  
4 about -- and I'll see if we can do it. I may  
5 be able to do it; I may not. Discuss it. Let  
6 me know if you need the seventh day. You may  
7 not. But please let me know by Wednesday. I  
8 don't know if it's possible. I'll have to  
9 check -- I should check the courtroom  
10 scheduler first, but I think we built in a  
11 breakdown day. I think six days should be  
12 enough. But that's something to think about.

13 Okay. To go to the third patent, U.S.  
14 patent No. 9369741. I'll reference it as the  
15 741 patent.

16 All right. The first of the disputed  
17 claim terms is to be found in claims 1, 8, and  
18 14. And the term that I have construed is,  
19 quote, "archived copy," close quote, or,  
20 quote, "archived copies," so either in the  
21 singular or the plural.

22 What I've adopted as the construction is  
23 as follows: Quote, "A real or virtual copy of  
24 a program retained by the system/real or  
25 virtual copies of programs retained by the

1 system."

2 Did everybody get that?

3 MR. CAWLEY: Could you repeat it,  
4 please, one more time, Your Honor?

5 ADMINISTRATIVE LAW JUDGE: Is that  
6 Mr. Cawley?

7 MR. CAWLEY: Yes, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: Okay. All  
9 right.

10 Quote, "A real or virtual copy of a  
11 program retained by the system or real or  
12 virtual copies of programs retained by the  
13 system," close quote.

14 MR. CAWLEY: Thank you, Your Honor.  
15 This is Mr. Cawley, and we got it.

16 ADMINISTRATIVE LAW JUDGE: Okay. Very  
17 good.

18 Ms. Morgan, I gather you got it as well?

19 COURT REPORTER: Yes, I did. Thank you.

20 ADMINISTRATIVE LAW JUDGE: You're  
21 welcome.

22 And, Mr. Lumish, I gather you got that?

23 MR. LUMISH: Yes, Your Honor, I have it.

24 ADMINISTRATIVE LAW JUDGE: Okay. The  
25 next term that I'm construing is to be found

1 in claims 1 and 8. And, boy, do I remember  
2 the arguments over this one from the Markman  
3 for the next -- actually for the next several  
4 terms. There was a lot of discussion about  
5 these terms.

6 So the first term I'm construing is,  
7 quote, "specified time," close quote -- just  
8 two words. And the construction I am adopting  
9 is as follows: Quote, "a specific duration of  
10 time or at a clock time," close quote.

11 Any problems?

12 MR. CAWLEY: This is Mr. Cawley, and we  
13 would like to hear it again, please.

14 ADMINISTRATIVE LAW JUDGE: Of course.  
15 Quote, "a specific duration of time or at a  
16 clock time," close quote.

17 Were you able to get that, Mr. Cawley?

18 MR. CAWLEY: Yes, ma'am.

19 ADMINISTRATIVE LAW JUDGE: Okay.

20 Very good. Mr. Lumish?

21 MR. LUMISH: Yes, Your Honor, I have it.

22 ADMINISTRATIVE LAW JUDGE: Okay.

23 Ms. Morgan?

24 COURT REPORTER: Let me just clarify,  
25 was that -- one question: Did you say, "or at

1 a clock time"?

2 ADMINISTRATIVE LAW JUDGE: Yes, I did.

3 COURT REPORTER: Okay. Thank you.

4 ADMINISTRATIVE LAW JUDGE: You're  
5 welcome.

6 Okay. The next term is to be found in  
7 claims 1 and 8. The term is as follows:  
8 Quote, "a specified time after the start time  
9 but before the end time," close quote.

10 The adopted construction is as follows:  
11 Quote, "a specific duration of time or at a  
12 clock time that falls after the start time but  
13 before the end time," close quote.

14 Would anybody like me to repeat that?

15 MR. LUMISH: This is Doug Lumish, Your  
16 Honor. I have it.

17 ADMINISTRATIVE LAW JUDGE: Mr. Cawley?

18 MR. CAWLEY: This is Mr. Cawley. I  
19 would like to have it one more time, Judge.

20 ADMINISTRATIVE LAW JUDGE: Of course.  
21 Not a problem.

22 Quote, "a specific duration of time or  
23 at a clock time that falls after the start  
24 time but before the end time," close quote.

25 MR. CAWLEY: Thank you, Judge. This is



1 Mr. Cawley, and we have it.

2 ADMINISTRATIVE LAW JUDGE: You're  
3 welcome.

4 Okay. The next claim term is also to be  
5 found in claims 1 and 8 of this patent. The  
6 term is as follows: Quote, "configured prior  
7 to the start time," close quote.

8 The claim construction I have adopted is  
9 as follows: Quote, "set prior to the start  
10 time," close quote.

11 Does anyone need me to repeat that?

12 MR. CAWLEY: This is Mr. Cawley. I  
13 think we have that one, Judge.

14 ADMINISTRATIVE LAW JUDGE: Okay. I  
15 gather you got it as well, Mr. Lumish?

16 MR. LUMISH: I did indeed, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: Okay. Good.  
18 All right. The next claim term or the fifth  
19 disputed claim term for this patent that I am  
20 construing is taken from claim No. 1. And the  
21 term is "control circuitry configured to" or  
22 just the term "control circuitry." It's  
23 either the entire phrase or just the two  
24 words, "control circuitry." Actually, it can  
25 be either.

1           So the adopted construction is: Quote,  
2       "a processor or processors configured to,"  
3       close quote.

4           Did everyone get that?

5           MR. CAWLEY: Yes, Your Honor. This is  
6       Mr. Cawley.

7           ADMINISTRATIVE LAW JUDGE: Mr. Lumish?

8           MR. LUMISH: We did as well. Yes, Your  
9       Honor.

10          ADMINISTRATIVE LAW JUDGE: Again, the  
11       rationale is similar to that which I started  
12       to give above for one of the other patents  
13       where the term "circuitry" was used.

14          And by the way, we've determined that  
15       this also is not a means-plus-function claim  
16       term. Again, the written order will provide a  
17       lot more detail and the rationale in some  
18       detail including the references to the  
19       appropriate parts of the patent specification,  
20       any figures that might be necessary, any of  
21       the embodiments that might be necessary, and  
22       to precedent, case precedent.

23          All right. Let me see. The next one.  
24       I think -- let me just see. Bear with me.  
25       This is a long document. Let me just see

1 where it goes. I think that was the last  
2 disputed claim term.

3 MR. LUMISH: This is Doug Lumish. I  
4 believe it was.

5 MR. CAWLEY: We think it was, Your  
6 Honor.

7 ADMINISTRATIVE LAW JUDGE: Yes, it was.  
8 Okay. Again, my apologies for doing it this  
9 way, but I thought you would rather have the  
10 constructions now than wait for the written  
11 order. We're still working on it. We've got  
12 the --

13 MR. CAWLEY: We appreciate it, Your  
14 Honor. We very much appreciate it, because  
15 this is going to make our lives much simpler  
16 in the next few days and make for a much  
17 better hearing.

18 ADMINISTRATIVE LAW JUDGE: Yeah, I know.  
19 I agree. And, again, I am so sorry it's so  
20 late. We've been pretty crunched this summer.  
21 I think we've gotten out five IDs since  
22 February or March; and I've had four -- three  
23 evidentiary hearings, one of which just ended  
24 a little over two weeks ago. So we've just  
25 been going as fast as we can. And I'm sorry.

1 We would like to get these out sooner, but  
2 we're doing the best we can. I know that you  
3 need them. I know that you need them. And it  
4 makes life difficult when you don't have them.

5 So what I'm doing, also, I'm finishing  
6 up -- I'm just finishing up the motions in  
7 limine and high priority objections. I'm just  
8 about done. If I can get some of the written  
9 orders out -- I usually do them for my own  
10 purposes, for note purposes, in chart form so  
11 that I can turn them pretty quickly into  
12 orders.

13 I got out order 37 earlier this week,  
14 and I noticed that one of Rovi's motions in  
15 limine is somewhat redundant of the part of  
16 order No. 37 that dealt with the late  
17 invoices. So that part of the Rovi motion is  
18 going to be moot. It's already been  
19 addressed. But there's another part of that  
20 motion in limine that I will be addressing as  
21 well.

22 So in any event, we will have another  
23 one of these teleconferences on Wednesday.  
24 And I know Mike sent you an email about that  
25 one as well.

1 MR. CAWLEY: Yes, Your Honor.

2 ADMINISTRATIVE LAW JUDGE: That was  
3 Mr. Cawley?

4 MR. CAWLEY: Yes, it was, Your Honor.  
5 And we agree that that one relating to the  
6 invoices is moot.

7 ADMINISTRATIVE LAW JUDGE: Okay.  
8 Good. And, Mr. Lumish, you have the email,  
9 also, about our Wednesday telephone  
10 conference?

11 MR. LUMISH: I do, Your Honor. This is  
12 Doug Lumish speaking.

13 I was wondering if I could ask, though,  
14 we understand Your Honor's requirements that  
15 there be one speaker and one listener. Again,  
16 we're not sure what issues are in place for  
17 that hearing. It's a little bit challenging,  
18 and we want to ensure we have the right people  
19 available to Your Honor.

20 So if there's any guidance we can get as  
21 to what the issues are likely to be that you  
22 would like to hear oral argument on or if  
23 there's any relief to be gotten as to the  
24 number of listeners that we can sort of cycle  
25 in and out efficiently, that would be much

1 appreciated.

2 ADMINISTRATIVE LAW JUDGE: Okay. That's  
3 not a problem. What I'm going to be  
4 addressing, I'm going to give you my rulings  
5 on each of the high priority objections and  
6 motions in limine. It's strictly -- that  
7 phone call is strictly limited to those  
8 motions and high priority objections. So  
9 that's the first thing.

10 Actually, as I've been going through, at  
11 this point, I really don't have any questions.  
12 I think that your motions in limine and high  
13 priority objections were pretty well scoped  
14 out with lots of supporting information. So,  
15 so far, I quite honestly don't have any  
16 questions, and I don't think that there's a  
17 need for a duplicative argument.

18 As I said, again, your briefs were  
19 pretty well laid out, and they were  
20 supported -- where some of the motions asked  
21 that certain paragraphs from expert reports be  
22 stricken or where other parts of a brief be  
23 stricken, they were pretty well spelled out.  
24 They were very detailed as they typically are.

25 So unless there's anything that either

1 of you would like to address, if there's  
2 something particular that you would like me to  
3 listen to, I'm happy to do that. But I think  
4 I will leave that to you. I think I found the  
5 motions to be pretty clear and well argued and  
6 constructed.

7 MR. LUMISH: Thank you, Your Honor, I  
8 appreciate that. This is Doug Lumish.

9 ADMINISTRATIVE LAW JUDGE: Okay. Good.  
10 Mr. Cawley?

11 MR. CAWLEY: Yes, that's fine, Your  
12 Honor. We will be prepared to hear Your  
13 Honor's rulings, and we'll also have people  
14 available. If Your Honor wants to hear more,  
15 we'll be ready to do that.

16 ADMINISTRATIVE LAW JUDGE: I'll tell you  
17 what I will do, and this is what I've done  
18 before. I'm finishing up, and I should be  
19 finished, I think, by Tuesday morning. So  
20 what I will do is we'll send you an email --  
21 Mike or Jay will send you an email, probably  
22 Mike. And if I have any questions, I'll lay  
23 them out for you; and that way, you'll be  
24 prepared.

25 I'm sorry it can't be sooner, but I'm

1 out on Monday. I'm hoping not to work. But I  
2 think by Tuesday around noon, again, if I have  
3 any questions, I'll send them to you. That  
4 way, you can have anybody on that you think  
5 needs to be there to address the question or  
6 questions.

7 MR. CAWLEY: Right. This is Mr. Cawley,  
8 and that would be much appreciated, Your  
9 Honor.

10 ADMINISTRATIVE LAW JUDGE: Okay. Good.  
11 Mr. Lumish, will that work for you?

12 MR. LUMISH: That will be very helpful,  
13 Your Honor. Thank you very much for that.

14 ADMINISTRATIVE LAW JUDGE: I'm sorry,  
15 again, it's such short notice. I really don't  
16 like doing it this way. But, as some of you  
17 know, for two years of the three I've been  
18 here, I only had one attorney for a whole lot  
19 of reasons having to do with elections and  
20 timing and all sorts of things.

21 So I am delighted to say that Mike has  
22 been with me for almost a year. Jay has been  
23 with me for more than two years. So we're  
24 pretty well set.

25 But I don't like to do this. But when



1 it's necessary, I will. And we try and give  
2 you as much heads-up as we can so that -- and,  
3 typically, if I have questions, that's what I  
4 do. I try and send them in advance.

5 All right. Is there anything else that  
6 anybody needs or would like me to address,  
7 whether today or on Wednesday, if you can  
8 think of anything?

9 MR. LUMISH: Not for Comcast, Your  
10 Honor.

11 MR. CAWLEY: Not for Rovi either.

12 ADMINISTRATIVE LAW JUDGE: All right.  
13 Well, also, I was thinking about this, too.  
14 I've made up my mind about the summary  
15 determination as well. And I was thinking of  
16 addressing that and what my rulings are going  
17 to be in the Wednesday phone conference.

18 Would that be helpful as well, so you  
19 can prepare accordingly for the evidentiary  
20 hearing?

21 MR. CAWLEY: Yes. This is Mr. Cawley.  
22 It definitely would, Your Honor.

23 ADMINISTRATIVE LAW JUDGE: Okay. Then  
24 that's what I will do.

25 As you know, I've read the briefs. I

1 thought the hearing was really helpful. It's  
2 the first time I've done that in three years  
3 for a summary determination motion. But I  
4 thought that it was important enough to do it;  
5 which is not to say the others aren't, but  
6 this one was quite significant.

7 So, yeah, I'll let you know what my  
8 rulings are going to be. I'm working on that  
9 summary determination. I don't know that I'll  
10 get it out before -- I don't know that I'll  
11 get the actual order out before the hearing,  
12 but at least you'll know what I'm planning to  
13 do. Okay?

14 MR. CAWLEY: Yes. Thank you, Judge.

15 ADMINISTRATIVE LAW JUDGE: All right.  
16 Is there anything else that anybody would like  
17 to raise or any issues?

18 MR. CAWLEY: Not from Rovi, Your Honor.

19 ADMINISTRATIVE LAW JUDGE: Okay. Good.

20 MR. LUMISH: Nor from Mr. Comcast.

21 Thank you.

22 ADMINISTRATIVE LAW JUDGE: You're  
23 welcome.

24 Okay. Then if not, I'll hear from  
25 you -- I'll talk to you again on Wednesday.

1 Again, if I'll have questions, we'll get an  
2 email out to you.

3 MR. CAWLEY: Very good.

4 ADMINISTRATIVE LAW JUDGE: Thank you,  
5 everybody. Thank you, Ms. Morgan. I know  
6 this was not easy.

7 COURT REPORTER: Thank you. It was  
8 fine. Thank you.

9 ADMINISTRATIVE LAW JUDGE: All right.  
10 Take care, everybody. Have a good weekend,  
11 and we'll talk on Wednesday.

12 MR. CAWLEY: Thank you, Judge.

13 MR. LUMISH: Thank you, Your Honor.

14 (Conference adjourned 2:23 p.m.)  
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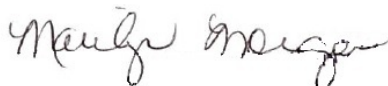
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