

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

COMCAST CABLE COMMUNICATIONS, LLC;)
TVWORKS, LLC; and)
COMCAST MO GROUP, INC.,)

Plaintiffs,)

v.)

SPRINT COMMUNICATIONS COMPANY L.P.;)
SPRINT SPECTRUM L.P.; and)
NEXTEL OPERATIONS, INC.,)

Defendants.)

C. A. No.: 1:12-cv-00859-JD

SPRINT COMMUNICATIONS COMPANY L.P. and)
SPRINT SPECTRUM L.P.,)

Counterclaim-Plaintiffs,)

v.)

COMCAST CABLE COMMUNICATIONS, LLC;)
COMCAST IP PHONE, LLC;)
COMCAST BUSINESS COMMUNICATIONS, LLC;)
and)
COMCAST CABLE COMMUNICATIONS)
MANAGEMENT, LLC;)

Counterclaim-Defendants.)

SPRINT'S OPENING CLAIM CONSTRUCTION BRIEF

Pursuant to Section G of the Court's August 16, 2012 Case Management Order #1, Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel Operations, Inc. (collectively, "Sprint") submit the following Opening Claim Construction Brief regarding Sprint's asserted patents in this case.

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	SUMMARY OF ISSUES	1
III.	LEGAL STANDARDS	1
	A. The Role of the Claims	1
	B. The Role of the Specification	2
	C. The Role of the Prosecution History	3
	D. Other Evidence During Claim Construction	3
	E. Indefiniteness and Invalidity During Claim Construction	4
IV.	ARGUMENTS	4
	A. Overview of the ‘654 Patent	4
	B. Disputed Terms from the ‘654 Patent	5
	C. Overview of the ‘4,907 and ‘7,907 Patents	8
	D. Disputed Terms of the ‘4,907 and ‘7,907 Patents	10
	E. Overview of the ‘886 Patent	16
	F. Disputed Terms from the ‘886 Patent	17
	G. Overview of the ‘916 Patent	20
	H. Disputed Terms from the ‘916 Patent	21
	I. Overview of the ‘666 Patent	27
	J. Disputed Terms from the ‘666 Patent	29
V.	CONCLUSION	31

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Allen Eng'g Corp. v. Bartell Indus., Inc.</i> , 299 F.3d 1336 (Fed. Cir. 2002).....	12
<i>Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP</i> , 616 F.3d 1249 (Fed. Cir. 2010).....	2
<i>Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.</i> , 289 F.3d 801 (Fed. Cir. 2002).....	11
<i>CR Bard, Inc. v. M3 Systems, Inc.</i> , 157 F. 3d 1340 (Fed. Cir. 1998).....	11
<i>Exxon Research and Engineering Co. v. U.S.</i> , 265 F.3d 1371 (Fed. Cir. 2001).....	4, 14, 15
<i>IMS Tech., Inc. v. Haas Automation, Inc.</i> , 206 F.3d 1422 (Fed. Cir. 2000).....	11
<i>Merck & Co., Inc., v. Teva Pharms. USA, Inc.</i> , 395 F.3d 1364 (Fed. Cir. 2005).....	7
<i>Microsoft Corp. v. i4i Ltd. P'ship</i> , 131 S. Ct. 2238 (2011).....	4
<i>NTP, Inc. v. Research in Motion Ltd.</i> , 418 F.3d 1282 (Fed. Cir. 2005).....	3
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (<i>en banc</i>)	1, 2, 3, 12, 13, 23, 29, 31
<i>Process Control Corp. v. HydReclaim Corp.</i> , 190 F.3d 1350 (Fed. Cir. 1999).....	20
<i>SciMed Life Sys., Inc. v. Adv. Cardiovascular Sys., Inc.</i> , 242 F.3d 1337 (Fed. Cir. 2001).....	3
<i>Teleflex, Inc. v. Ficosa N. Am. Corp.</i> , 299 F.3d 1313 (Fed. Cir. 2002).....	3
STATUTES	
35 U.S.C. § 282	4

I. BACKGROUND

In this suit, Sprint asserts that Comcast infringes six patents owned by Sprint: U.S. Patent Nos. 7,054,654 (“the ‘654 patent”), 6,754,907 (“the ‘4,907 patent”), 6,757,907 (“the ‘7,907 patent”), 7,602,886 (“the ‘886 patent”), 6,727,916 (the ‘916 patent”), 6,965,666 (“the ‘666 patent”) (collectively, the “Sprint Patents”). In this brief, Sprint will address the proper construction of certain claim language found in the asserted Sprint Patents.¹

II. SUMMARY OF ISSUES

The parties dispute the proper construction of 23 terms or phrases contained in the asserted claims of the Sprint Patents. For many of these terms or phrases, Sprint contends no judicial construction is warranted and that the claim language should be afforded its plain and ordinary meaning. In contrast, Comcast’s proposals seek to either: (1) unduly restrict the claims to limitations cherry-picked from the specification or manufactured by Comcast; or (2) render the claims invalid as indefinite. Neither the relevant evidence nor law supports Comcast’s approach to claim construction. Sprint respectfully urges this Court to adopt Sprint’s proposals.

III. LEGAL STANDARDS

A. The Role of the Claims

It is a “bedrock principle” of claim construction that “the claims of a patent define the invention which the patentee is entitled the right to exclude.”² The words of the claims thus define the scope of the patented invention.³

¹ In addition, Comcast alleges that Sprint infringes three patents—namely, U.S. Patent Nos. 5,987,323, 5,991,271, and 6,885,870 (collectively, the “Comcast Patents”). Comcast will address the parties’ disputed constructions for the Comcast Patents in its opening brief. Sprint will respond to these issues in its responsive brief, due November 21.

² *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*) (quotation omitted).

³ *Id.* at 1312 (citation omitted).

Ordinarily, claims should be given their ordinary and customary meaning as understood by a person of ordinary skill in the art, viewing the claim terms in the context of the entire patent.⁴ In most cases, the ordinary meaning of claim language is readily apparent, and claim construction will involve little more than “the application of the widely accepted meaning of commonly understood words.”⁵

B. The Role of the Specification

Claim terms, of course, must be understood in light of an inventor’s written description of the invention.⁶ Thus, where the meaning cannot be derived solely from the claim language itself, the specification is the “single best guide to the meaning of a disputed term.”⁷ Moreover, “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.”⁸ However, as a general rule, the particular examples or embodiments discussed in the specification are not to be read into the claims as limitations.⁹

Importantly, interpreting what is meant by the words in a claim “is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.”¹⁰ Thus, “claim terms take on their ordinary and accustomed meanings unless the patentee demonstrated an intent to deviate from the ordinary and accustomed meaning of a claim term by redefining the term or by characterizing the invention in the intrinsic record using words or expressions of

⁴ *Id.* at 1312-13.

⁵ *Id.* at 1314.

⁶ *Id.* at 1313.

⁷ *Id.* at 1321.

⁸ *Phillips*, 415 F.3d at 1316.

⁹ *Id.* at 1323.

¹⁰ *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1264 (Fed. Cir. 2010) (citation omitted).

manifest exclusion or restriction, representing a clear disavowal of claim scope.”¹¹ Absent such re-definition or manifest disavowal, the Federal Circuit “indulge[s] a heavy presumption that a claim term carries its ordinary and customary meaning.”¹²

C. The Role of the Prosecution History

The prosecution history also may explain the meaning of claim language.¹³ The prosecution history consists of the complete record of the patent examination proceedings before the U.S. Patent and Trademark Office, including cited prior art.¹⁴ The prosecution history may reveal “how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.”¹⁵ Again, such narrowing requires “words or expressions of manifest exclusion or restriction, representing a clear disavowal in claim scope.”¹⁶

D. Other Evidence During Claim Construction

In addition to the above evidence, a court may consider additional evidence that is “extrinsic” to the patent. “While extrinsic evidence ‘can shed useful light on the relevant art,’” such evidence “is less significant than the intrinsic record in determining the legally operative meaning of claim language.”¹⁷

¹¹ *Teleflex, Inc. v. Ficoso N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed. Cir. 2002); *see SciMed Life Sys., Inc. v. Adv. Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1344 (Fed. Cir. 2001).

¹² *Teleflex, Inc.*, 299 F.3d at 1325 (quotation omitted).

¹³ *Phillips*, 415 F.3d at 1317.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *NTP, Inc. v. Research in Motion Ltd.*, 418 F.3d 1282, 1308-09 (Fed. Cir. 2005) (quotation omitted).

¹⁷ *Phillips*, 415 F.3d at 1317.

E. Indefiniteness and Invalidity During Claim Construction

“A patent shall be presumed valid.”¹⁸ A claim is only indefinite if it is “insolubly ambiguous” and “no narrowing construction can properly be adopted.”¹⁹ For this reason, if “the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, [the Federal Circuit has] held the claim sufficiently clear to avoid invalidity on indefiniteness grounds.”²⁰

Indefiniteness, like other invalidity defenses, must be shown by clear and convincing evidence.²¹

IV. ARGUMENTS

As mentioned, Sprint and Comcast dispute the proper construction of 23 terms from Sprint’s six asserted patents, as discussed below.

A. Overview of the ‘654 Patent Inventions Relating to Text Message Alert Services

The ‘654 patent is directed to a parental control feature—namely, sending an alert text message to a parent when their child accesses restricted television content.²² When the child accesses certain content, a server is programmed to send a text message to the parent alerting them of the child’s actions.²³ An example of the invention is illustrated as FIGS. 11 and 13 of the patent, reproduced below:²⁴

¹⁸ 35 U.S.C. § 282.

¹⁹ *Exxon Research and Engineering Co. v. U.S.*, 265 F.3d 1371, 1375 (Fed. Cir. 2001).

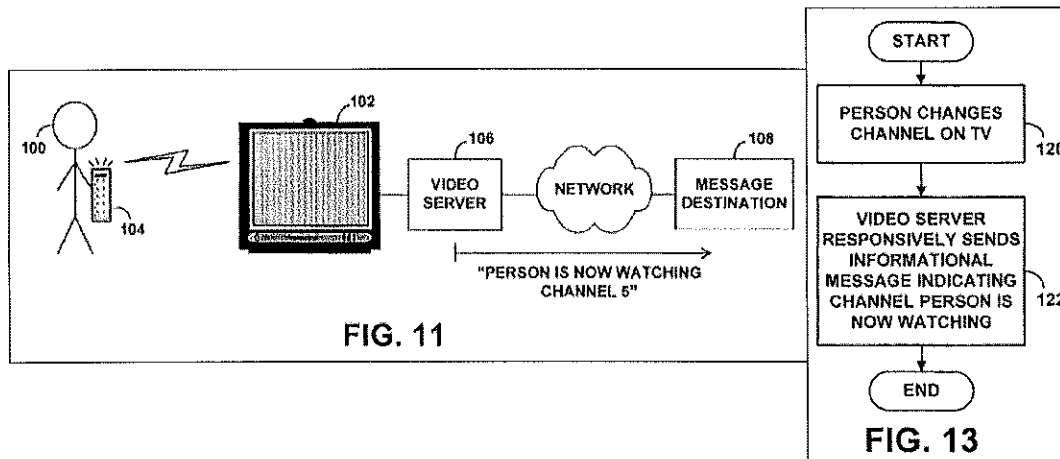
²⁰ *Id.*

²¹ *Microsoft Corp. v. i4i Ltd. P’ship*, 131 S. Ct. 2238, 2251-2 (2011).

²² ‘654 Patent (D.I 52-5) at 15:7-10.

²³ *Id.* at 15:52-56.

²⁴ *Id.* at FIGS. 11, 13.



B. Disputed Terms from the '654 Patent

For this patent, three terms are in dispute. For its part, Sprint proposes constructions based on the plain language used by the inventors' to define the scope of their invention. Comcast, however, advances narrowing definitions, improperly attempting to limit the claims to specific embodiments described in the specification. Such narrowing constructions are unwarranted.

1. "tunes a television to a given station"

Claim Language	Sprint's Construction	Comcast's Construction
"tunes a television to a given station"	No construction necessary.	"Changes the channel to which a television is tuned to a given channel."
Claim 1 of the '654 Patent.	The claim language should be afforded its plain and ordinary meaning.	
"tunes the television by tuning the host device"		
Claim 5 of the '654 Patent.		

The asserted claims of the '654 Patent require "tun[ing] the television to a given station" and "tun[ing] the television by tuning the host device."²⁵ The phrase "tunes a television" is self-explanatory and addresses subject matter familiar to lay jurors (i.e., the tuning of a television).

²⁵ '654 Patent, claims 1, 5.

No judicial construction is needed.

Attempting to import a limitation from the specification, Comcast argues that “tunes the television” means “changes the channel to which a television is tuned to a given channel.” Comcast’s construction needlessly adds complexity where none would otherwise exist. While changing a channel is one way to tune a television, it is, of course, not the only way. For example, a person of ordinary skill in the art—indeed, anyone that has ever operated a TV—would understand the claimed concepts of “tuning” a television to have a broader scope. For instance, a television may be “tuned” to a given station by changing the input source of the television or simply by turning the television on. Comcast’s construction is also inconsistent with dependent claim 5, which specifically states that the claimed tuning is done by “tuning the host device,” not the television.²⁶

The intrinsic record is devoid of any expressions of manifest restriction demonstrating an intention by the inventors to limit the claims as suggested by Comcast. The claims, specification, and prosecution history all use the language “tunes a television” broadly, and there is no legal or factual support for limiting the claims as proposed by Comcast.

2. “video server”

Claim Language	Sprint’s Construction	Comcast’s Construction
“video server” Claims 1 and 2 of the ‘654 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	A device that sends video signals to a television.

Claim 1 of the ‘654 patent recites “a method ... when a person tunes a television to a given station, a video server responsively sending a Short Message Service (SMS) message to a

²⁶ *Id.* at claim 5.

designated destination.”²⁷ Claim 2 further recites that the video server “comprises a host device serving the television.”²⁸ As such, the term “video server” is self-explanatory in the context of the claims—it is the server that has access to video access by the TV and that can responsively send an alert based on that access. Indeed, the claim language requires that the video server send a “message to a designated destination,” with no requirement that the video server also send “video signals to the television” as Comcast suggests.²⁹

Though Comcast’s construction attempts to limit the claims to an embodiment in the patent’s specification, the inventors did not define the claimed “video server” in this manner. To redefine the meaning of particular claim terms, the inventor must “clearly express that intent in the written description.”³⁰ The specification of the ‘654 Patent, however, does not redefine the “video server” and provides, consistent with the claim language, that the “video server can responsively send an SMS message” to, *e.g.*, a cellular telephone.³¹ Absent a proper basis for restricting the claim language, the claimed “video server” should not be limited to “a device that sends video signals to a television.”

3. “host device”

Claim Language	Sprint’s Construction	Comcast’s Construction
“host device” Claims 2, 3, and 5 of the ‘654 Patent	A device co-located with the television.	A device co-located with a television that sends video signals to the television.

Claims 2, 3 and 5 of the ‘654 Patent recite a “host device.” Throughout the intrinsic record, the claimed “host device” is consistently described as a “device co-located with the

²⁷ ‘654 Patent, claim 1.

²⁸ *Id.* at claim 2.

²⁹ *Id.* at 9:1-9.

³⁰ *Merck & Co., Inc., v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1370 (Fed. Cir. 2005).

³¹ ‘654 Patent at 15:7-11.

television,” as set forth by Sprint’s proposed construction.³² Moreover, nothing in the intrinsic record restricts the host device to a device that sends “video signals to the television” as contemplated by Comcast’s proffered construction. For instance, the description of FIG. 12 clearly states that “a host device . . . sends an informational message indicating a station.”³³ The specification further explains “the host device could apply program logic to responsively send to a predefined destination an SMS message or other informational message that indicates the television channel that the person is watching.”³⁴ This language in the specification is consistent with the claim language and illustrates that the “host device” does not need to send video to the television. Comcast’s proposal seeks to add requirements not supported by the intrinsic record and must be rejected in favor of Sprint’s proposal.

**C. Overview of the ‘4,907 and ‘7,907 Patents
Inventions Relating to Video-On-Demand Systems and Services**

The ‘4,907 and ‘7,907 patents are generally directed to systems and methods for providing enhanced video-on-demand services. As described in the patents, video-on-demand systems “offer[]an individual viewer various selections from a video content library for viewing on-demand,” including video such as “movies, television shows, documentaries, news, and sports.”³⁵ While video-on-demand was known before these patents were filed in February 2000, conventional video-on-demand systems suffered from two significant limitations. First, to access video-on-demand on multiple TVs, the user would need to buy multiple set-top boxes.

³² The specification recites “the video server is shown as a host device (e.g., a cable-TV receiver or satellite TV receiver, external to and/or integrated into the television). *See id.* at 15:24-26, claims 3, 4.

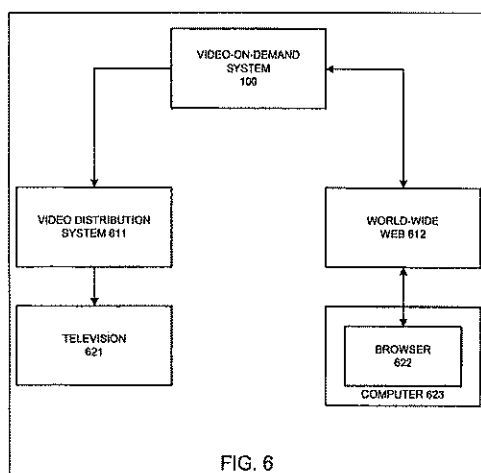
³³ *Id.* at 9:40-43.

³⁴ *Id.* at 14:24-45.

³⁵ *See* ‘4,907 Patent at 1:13-17.

This created unnecessary expense.³⁶ Second, video-on-demand could not be accessed through anything but a television/set-top box pair. This artificially limited the user's experience, *e.g.*, the user could not access the video files in rooms without a television or on other multimedia-enabled devices, such as a laptop or tablet computer.³⁷

Recognizing these problems, the '4,907 and '7,907 patents disclose an enhanced video-on-demand system whereby users "use a portable computer connected over second communications system for remote control" such that the user "can control the video display using their portable computer."³⁸ One embodiment of the inventions, for example, provides a system wherein video-on-demand files are accessible through both a traditional television/set-top box pair and through an Internet-enabled video device, as shown below:³⁹



In this embodiment, "[t]he video-on-demand system 100 is coupled to a video distribution system 611 and to the web 612."⁴⁰ The patent teaches that the video distribution system 611 "is coupled to a television 621" through any conventional means, *e.g.*, a set-top

³⁶ See *Id.* at 1:41-43.

³⁷ See '7,907 Patent (D.I 52-2) at 1:35-42.

³⁸ See '4,907 Patent (D.I 52-1) at 1:35-41.

³⁹ See *Id.* at 5:18-26, FIG. 6; see also '7,907 Patent at 5:33-41, FIG. 6.

⁴⁰ See *Id.*, 5:19-21 (emphasis supplied).

box.⁴¹ But unlike conventional video-on-demand systems, Sprint's novel system also allows the user to access video files over the "web" via an Internet-enabled "portable computer."⁴²

D. Disputed Terms of the '4,907 and '7,907 Patents

For these patents, the parties dispute the meaning of nine terms/phrases.⁴³ Here again, Sprint's constructions adhere to the plain and ordinary language used by the inventors to define their inventions.⁴⁴ In contrast, Comcast offers constructions that seek to re-define the invention based on litigation-inspired readings of the specifications. Comcast also asks this Court to find several claim terms indefinite, thereby rendering the claims invalid. Comcast, however, cannot meet the high "clear and convincing" standard for indefiniteness. Because the claim language is clear on its face and understandable in the context provided by the intrinsic record, Comcast's proposals should be rejected.

1. "operating a video-on-demand system"

Claim Language	Sprint's Construction	Comcast's Construction
"Operating a video-on-demand system"	No construction necessary.	Operating a video-on-demand system without the use of a set-top box for remote control.
Claim 10 of the '4,907 Patent	The claim language should be afforded its plain and ordinary meaning.	
Claim 21 of the '7,907 Patent		

The preamble of claim 10 of the '4,907 Patent and claim 21 of the '7,907 Patent recite "a

⁴¹ *Id.* at 5:21-22.

⁴² *Id.* at 5:19-26.

⁴³ Sprint initially disputed the meaning of twelve terms of the '4,907 and '7,907 Patents in the Joint Claim Construction Chart filed October 4, 2013. To narrow the issues for the Court, Sprint no longer disputes Comcast's proposed construction for the following two terms: "control screen signal" and "implementing a viewer control selection." Again, to narrow the issues for the Court, Sprint no longer intends to assert claim 15 of the '4,907 Patent, rendering the claim construction issues as to that claim moot.

⁴⁴ *See id.*

method of operating a video-on-demand system.” Sprint submits that no judicial construction of this claim language is necessary because the concept of “operating a video-on-demand system” is likely familiar to lay jurors. The jury’s every day experiences with their own cable services provider are more than enough to understand what it means to “operat[e] a video-on demand system,” particularly in light of the further context provided by the claims.

Attempting to unduly limit the claims, Comcast proposes a construction that seeks to render any system that uses “a set-top box for remote control” beyond the scope of the claim. Comcast’s arguments fail for at least two reasons.

First, the Federal Circuit has explained that a claim’s preamble is ordinarily viewed as a statement of purpose that does not have a limiting effect.⁴⁵ Consistent with this authority, the instant preambles are non-limiting because the rest of the claim sets forth a “structurally complete invention.”⁴⁶ Because these preambles merely provide a descriptive context to the remaining claim elements, they should not be construed in a limiting manner.⁴⁷

Second, while Comcast seeks to exclude systems that rely, at least in part, on conventional “use of a set-top box for remote control,” the intrinsic evidence is devoid of any statement of exclusion or disavowal supporting Comcast’s narrowing construction. Indeed, the aim of Sprint’s inventions is to give user’s more ways to access video-on-demand content by combining conventional techniques for operating a video-on-demand system with, *e.g.*, newer Internet-based technologies.⁴⁸ Given the disclosed combination of conventional and newer

⁴⁵ See *CR Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1350 (Fed. Cir. 1998); See *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 809 (Fed. Cir. 2002).

⁴⁶ *Catalina*, 289 F.3d at 808.

⁴⁷ See *IMS Tech., Inc. v. Haas Automation, Inc.*, 206 F.3d 1422, 1434-35 (Fed. Cir. 2000).

⁴⁸ See ‘4,907 Patent, Abstract, 1:38-40, 2:29-31, 5:15-6:26, FIGS. 6 and 7; ‘7,907 Patent, Abstract, 1:48-53, 2:44-46, 5:31-6:40, FIGS. 6 and 7.

techniques for operating a video-on-demand system,⁴⁹ Comcast's attempt to exclude systems that use "a set-top box for remote control" is unwarranted.⁵⁰

2. "video control signal" and "viewer control signal"

Claim Language	Sprint's Construction	Comcast's Construction
"video control signal"	No construction necessary.	A video control signal generated and processed without the involvement of a set-top box.
Claim 10 of the '4,907 Patent	The claim language should be afforded its plain and ordinary meaning.	
"viewer control signal"	No construction necessary.	A viewer control signal generated and processed without the involvement of a set-top box.
Claims, 21, 23, and 31 of the '7,907 Patent	The claim language should be afforded its plain and ordinary meaning.	

For "video control signal" and "viewer control signal" Comcast argues that the claimed signals must be "generated and processed without the involvement of a set-top box." The claims, however, are devoid of any such requirement, and there is no proper basis for inserting these limitations into otherwise straightforward claim language.⁵¹

As previously noted, the specification is clear that the present invention is meant to operate in conjunction with aspects of conventional video-on-demand systems.⁵² While the specification discusses certain disadvantages of prior systems that relied exclusively on set-top boxes to process video and control signals, the patentee did not disavow such systems from the scope of the invention in either the specification or during prosecution. The reasons why this arrangement was problematic was detailed in the patents, and summarized above.⁵³ Absent express disavowal, Comcast's construction improperly seeks to limit the claims and should be

⁴⁹ See, e.g., '4,907 Patent at FIG. 6; '7,907 Patent at FIG. 6.

⁵⁰ See *Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1346 (Fed. Cir. 2002).

⁵¹ See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005).

⁵² See '4,907 Patent, 5:15-6:26, FIGS. 6 and 7; '7,907 Patent, 5:31-6:40, FIGS. 6 and 7.

⁵³ See *supra* at § IV.C.

rejected.⁵⁴

3. “transferring [video content signals/the video content signals]” and “transferring [first/second] video signals”

Claim Language	Sprint’s Construction	Comcast’s Construction
“transferring [video content signals/the video content signals]” Claim 10 of the ‘4,907 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	In response to the video control signal, transferring [video content signals/the video content signals].
“transferring [first/second] video signals” Claims 21, 23, 25, 31, 33, 34, 36, and 37 of the ‘7,907 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	In response to the viewer control signal, transferring [first/second] video signals.

The claimed “transferring” of video signals is set forth with plain and non-technical language that will be easily understood by the jury without judicial construction. Comcast’s own proposals tacitly admit this reality, as they both parrot back the exact same non-technical claim language after adding new limitations to the claims. In other words, Comcast improperly attempts to redraft this plain language, seeking to require that the claimed transferring be “in response to the video control signal.” This proposal lacks support in either the actual claim language or in the specification. Indeed, the specification demonstrates that the transferring of video content signals is not “in response to” a particular signal, but is instead responsive to a host of signals that may be transmitted within the system.⁵⁵

Because Comcast’s proposals attempt to import limitations not mandated by either the claims or specification, they should be rejected in favor of the plain and ordinary meaning of this claim language.

⁵⁴ See *Phillips*, 415 F. 3d at 1316.

⁵⁵ See ‘4,907 Patent at 2:45-67, 4:5-27; ‘7,907 Patent at 2:49-3:3, 4:5-27.

4. “second communication system,” “the first communications interface,” and “the second communications interface”

Claim Language	Sprint’s Construction	Comcast’s Construction
“second communication system” Claims 10-18 of the ‘4,907 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning. <u>Alternatively:</u> The communication system associated with the “second communications interface”	Indefinite.
“the first communications interface” Claims 23-25 of the ‘7,907 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	Indefinite.
“the second communications interface” Claims 23-25 of the ‘7,907 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	Indefinite.

The ‘4,907 patent contains claims directed to a “second communication system.” Similarly, claim 23 of the ‘7,907 Patent recites a “first communications interface” and a “second communications interface.” While Comcast argues each of these claim elements is indefinite, Comcast cannot meet its heavy burden of establishing, by clear and convincing evidence, that this claim language is “insolubly ambiguous” such that “no narrowing construction can properly be adopted.”⁵⁶ In fact, the claims and specifications provide clear guidance as to the meaning of the “second communication system,” “first communications interface,” and “second communications interface” in the context of the claimed invention.

For instance, Figure 1 illustrates a “second communications” system that is connected to

⁵⁶ *Exxon Research and Engineering Co.*, 265 F.3d at 1375.

both a “second communications interface” and to the second display.⁵⁷ A “first interface” is also shown corresponding to a “first communication system” and “first display.”⁵⁸ The specification explains that a portable computer may be connected over a “second communications system” for remote control.⁵⁹ Further, the specification fully describes all aspects of the functioning and connection of the “second communication system.”⁶⁰ In light of the detailed description of a “second communication system” and the claimed “communication interfaces” within the patents, these terms are easily understood, are not indefinite, and do not need construction.⁶¹

5. “the video content signals”

Claim Language	Sprint’s Construction	Comcast’s Construction
“the video content signals”	No construction necessary.	Indefinite.
Claims 23-25 of the ‘7,907 Patent	The claim language should be afforded its plain and ordinary meaning.	

Claim 23 of the ‘7,907 patent also recites “video content signals.” This claim language unambiguously refers to signals of video content. Given its straightforward nature, no judicial construction of this claim phrase is necessary. Comcast cannot establish by clear and convincing evidence that this claim language is “insolubly ambiguous” so as to render the claims invalid as indefinite.⁶²

⁵⁷ ‘4,907 Patent FIG. 1.

⁵⁸ *Id.*

⁵⁹ *Id.* at 1:35-40.

⁶⁰ *Id.* at 2:14-67. The specification also fully describes how the “first communications interface” and the “second communications interface” are used within the context of the invention. *Id.* at 3:15-4:53.

⁶¹ If the Court finds that “second communication system” should be construed, Sprint proposes that, as shown in FIG. 1, the term should be construed as “the communication system associated with the second communications interface.” *Id.* at FIG. 1. Such a construction is consistent with the usage of the term “second communication system” in the figures, specification, and claims. *See, e.g., id.* at FIG. 1, claim 10, and 2:28-3:15.

⁶² *Exxon Research and Engineering Co.*, 265 F.3d at 1375.

**E. Overview of the ‘886 Patent
Inventions Relating to Location-Based Routing of 911 Calls**

As explained in the ‘886 Patent, the “ability to place an emergency services call by dialing 9-1-1 has become widespread throughout the United States.”⁶³ At its core, 9-1-1 services originally involved routing calls to state or local governmental entities that were responsible for coordinating an emergency response, known in the art as “Public Safety Answering Points” (or “PSAPs”).⁶⁴ Traditionally, 9-1-1 services were largely provided through a decades-old telephone network known as the Public Switched Telephone Network (“PSTN”).⁶⁵ The PSTN was able to accurately route a “9-1-1 call to the appropriate PSAP, i.e., the PSAP servicing the caller’s area, because the caller’s telephone number is associated with a fixed location.”⁶⁶

When the ‘886 Patent was filed, however, “packet networks [were] being used for voice communications, including emergency services calls.”⁶⁷ Unlike telephones connected to the PSTN, “[s]uch voice-over-packet (VoP) networks often route calls that are placed by client devices that can change their point of connectivity to the network.”⁶⁸ “Because of this mobility, client devices and their associated telephone numbers may not be reliably associated with fixed locations.”⁶⁹

To address this issue, the ‘886 Patent discloses a new routing scheme for intelligently gathering location data to reliably route an emergency call made from “from any location.”⁷⁰ In particular, the patent teaches 9-1-1 call routing based on a number of different and

⁶³ ‘886 Patent (D.I 52-3) at 1:16-17.

⁶⁴ *Id.* at 1:18.

⁶⁵ *Id.* at 1:21-24.

⁶⁶ *Id.*

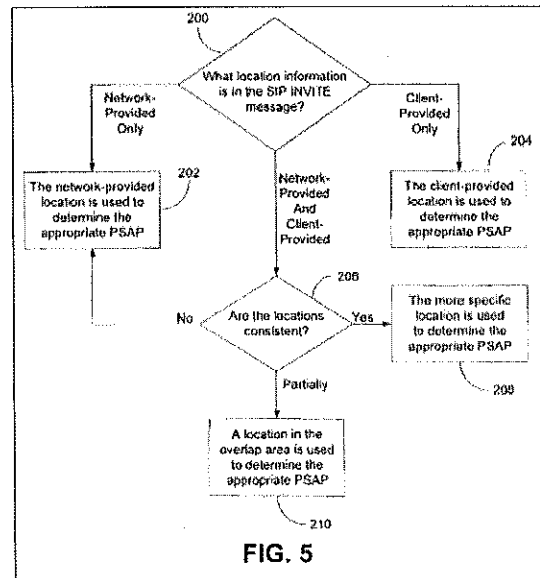
⁶⁷ ‘886 Patent, 1:27-28.

⁶⁸ *Id.* at 1:29-31.

⁶⁹ *Id.* at 1:31-33.

⁷⁰ *Id.* at 1:33-44.

independently-acquired locations.⁷¹ In one embodiment, this involves determining the calling devices location using two independent variables, i.e., a “client-provided location of said client device” and “network-provided location” of that same client/calling device.⁷² These different locations are then compared and, depending on the comparison, the call is routed using the best location-approximation that is available, as illustrated in Figure 5 (reproduced below).



F. Disputed Terms from the ‘886 Patent

With respect to the ‘886 Patent, the parties’ dispute the proper construction of two claim phrases.⁷³ From Sprint’s perspective, judicial construction is not necessary for the disputed claim language because the claims already provide more than enough context to understand the scope of the disputed language.

⁷¹ *Id.* at 1:47-59.

⁷² ‘886 Patent, 1:47-59.

⁷³ Sprint initially disputed the meaning of five terms of the ‘886 Patent in the Joint Claim Construction Chart filed October 4, 2013. Sprint no longer disputes Comcast’s proposed constructions for the following three terms: “location,” “client-provided location,” and “network-provided location.”

1. **“appropriate public safety answering point (PSAP)”/“appropriate PSAP”**

Claim Language	Sprint’s Construction	Comcast’s Construction
“appropriate public safety answering point (PSAP)”/“appropriate PSAP” Claims 1, 9, 10, 11, 12, and 18 of the ‘886 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	The public safety answering point (PSAP) that serves the caller’s current location.

Claim 1 recites “determining an appropriate public safety answering point (PSAP), from among a plurality of PSAPs, based on at least one of said network-provided location and said client-provided location.”⁷⁴ Thus, the straightforward language of the claims already defines the term “appropriate public safety answering point (PSAP),” and no further construction is necessary. Given the unambiguous claim language, the jury will easily understand that the “appropriate public safety answering point (PSAP)” is “the public safety answering point selected based on at least one of the networking-provided location and/or client-provided location,” as the claims already provide.

In contrast, Comcast’s proposed construction seeks to improperly limit the term “appropriate public safety answering point (PSAP)” to require that the PSAP serves the caller’s current location. First, Comcast’s construction does not comport with the context of the claims, which contemplate two potentially conflicting locations to be considered in selecting a PSAP.⁷⁵ Further, Comcast’s construction of the term “appropriate PSAP” ignores the clear teachings of the specification. The specification states that “the PSAP that is appropriate for answering the

⁷⁴ ‘886 Patent, claim 1.

⁷⁵ See ‘886 Patent, claim 1 (“determining an appropriate public safety answering point (PSAP) . . . based on at least one of said network-provided location and said client-provided location”).

call is usually the PSAP that serves the area in which the caller is located.”⁷⁶ “The PSAP that serves that location will typically be the PSAP that is appropriate to receive the emergency services call.”⁷⁷ As the ‘886 specification provides that the appropriate PSAP sometimes, but not always, is the PSAP that serves the caller’s current location, Comcast’s proposed construction should be rejected in favor of a plain and ordinary reading of the claim language.

2. **“based on an evaluation of said network-provided location and any client-provided location in said emergency services call request, wherein said evaluation involves determining whether said network-provided location and said any client-provided location are consistent”**

Claim Language	Sprint’s Construction	Comcast’s Construction
“based on an evaluation of said network-provided location and any client-provided location in said emergency services call request, wherein said evaluation involves determining whether said network-provided location and said any client-provided location are consistent” Claim 18 of the ‘886 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	Based on an evaluation of said network-provided location and a client-provided location in said emergency services call request, wherein said evaluation involves determining whether said network-provided location and said client-provided location are consistent.

Claim 18 recites “wherein said routing server is configured to route said emergency services call request to an appropriate PSAP . . . based on an evaluation of said network-provided location and any client-provided location in said emergency services call request, wherein said evaluation involves determining whether said network-provided location and said any client-

⁷⁶ *Id.* at 2:62-64.

⁷⁷ *Id.* at 12:26-28.

provided location are consistent.”⁷⁸ Given the claim language, the jury will understand that the claimed invention selects an appropriate PSAP, at least in part, by considering whether a network-provided location and any client-provided location are consistent.

Comcast in turn would like to redraft this claim to say “based on an evaluation of said network-provided location and a (instead of the actually-claimed “any”) client-provided location in said emergency services call request, wherein said evaluation involves determining whether said network-provided location and said ~~any~~ client-provided location are consistent.” This is claim re-drafting. And there is simply no basis for the re-write of this otherwise clear language.⁷⁹ Indeed, the specification confirms that the inventors contemplated evaluating “any client-provided location of the client device” in the context of the invention.⁸⁰ Comcast’s proposed construction should be rejected.

**G. Overview of the ‘916 Patent
Inventions Relating to An Improved Interface For Mobile Chatting**

When the ‘916 Patent was filed in December 2000, text messaging using a cellular phone was long-known.⁸¹ However, despite widespread and growing use, messaging interfaces at the time were not utilizing advancements in telecommunications, including the ability to connect to the Internet using a mobile phone.⁸² In addition, then-existing interfaces for sending textual messages suffered from cumbersome design constraints that negatively impacted the user’s messaging experience.

⁷⁸ ‘886 Patent, claim 18.

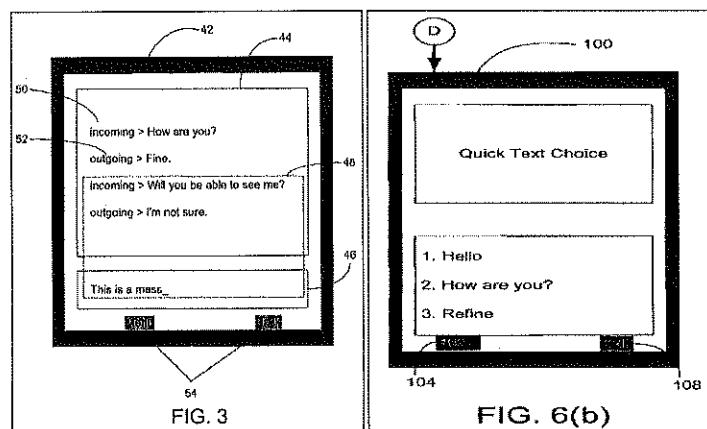
⁷⁹ *See Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357 (Fed. Cir. 1999) (courts do not “redraft claims”).

⁸⁰ *Id.* at 1:53-54.

⁸¹ ‘916 Patent (D.I 52-6) at 1:24-32.

⁸² *Id.* at 1:50-2:1.

To address these issues, the '916 Patent describes a user interface that facilitates an enhanced "interactive chat session" through a mobile device.⁸³ The new interface not only leveraged Internet-related technologies (e.g., a browser),⁸⁴ it also improved the user's experience by reducing or eliminating unnecessary keystrokes during messaging.⁸⁵ In one embodiment, the '916 Patent describes a simplified layout that includes a "history-of-communications" segment and a "choice-item" segment.⁸⁶ As described and claimed in the patent, the "history-of-communications" segment is a listing of older messages exchanged between the parties, as illustrated below in Figure 3. The "choice-item" segment allows the user to select pre-configured messaging options, e.g., pre-defined messages, as illustrated below in the excerpted Figure 6(b).



H. Disputed Terms from the '916 Patent

The parties dispute the proper construction of six terms from this patent. For its part, Sprint proposes constructions that match the actual language used by the inventors to define their

⁸³ *Id.* at 1:10-12; 4:25-27

⁸⁴ *Id.* at 1:66-2:8; 4:46-49.

⁸⁵ *Id.* at 4:60-64.

⁸⁶ '916 Patent, 4:49-52.

inventions. Comcast instead seeks narrowing constructions designed to improperly limit the claimed inventions to specific examples described in the specification.

1. “actuator”

Claim Language	Sprint’s Construction	Comcast’s Construction
“actuator” Claims 1, 13, 22, and 23 of the ‘916 Patent	A mechanism for triggering an action.	A mechanical device for triggering an action.

Claims 1, 13, and 22 each recite “at least one choice-item segment having a plurality of choice-items ... [each] selectable by a user through actuation of the at least one actuator.” From this context provided by the claims, the claimed “actuator” is “a mechanism for triggering an action” (here, the selection of a choice-item), as set forth by Sprint’s construction.

For its part, Comcast’s proposed construction attempts to limit the claimed “actuator” to a mechanical device. No such “mechanical” requirement is dictated by the claim language, the specification, or other intrinsic evidence. For instance, the specification explains that “the handheld device may have one or two softkey actuators . . . that the user may use to trigger actions by the microbrowser.”⁸⁷ Softkey, which modifies actuator above, is expressly defined in the specification as “a programmable key that accepts input from the user.”⁸⁸ Absent from this disclosure is any requirement that the “actuators” be limited to mechanical devices. Rather, the specification makes clear that the actuator is simply a mechanism for triggering an action. Absent any proper basis for limiting the claimed “actuator” to a “mechanical device,” Comcast’s proposed construction must be rejected.

⁸⁷ *Id.* at 8:20-24.

⁸⁸ *Id.* at 2:43-44.

2. “choice-item segment”

Claim Language	Sprint’s Construction	Comcast’s Construction
“choice-item segment” Claims 1, 2, 7, 13, 14, 16, 22, and 23 of the ‘916 Patent	A segment of a display listing one or more choice items	A segment of a choice card listing one or more choice- items.

Claim 1 recites a “user interface comprising ... a display block including ... at least one choice-item segment displayed on the display screen.”⁸⁹ From this claim language, it is clear that the claimed “choice-item segment” is simply a segment of a display listing one or more choice items. The specification is in accord, explaining that “[t]he user interface may have ... at least one choice-item segment displayed on the display screen.”⁹⁰ As such, the specification confirms that the term “choice-item segment” references a segment of the display listing one or more choice items, as set forth by Sprint’s construction.

Despite such clarity in the claims and the specification, Comcast’s proposed construction is unduly limiting as it requires a “choice card,” a specific layout of the display described in certain exemplary embodiments and recited in some (but not all) asserted claims. While the parties dispute the proper construction of “choice card,” the specification explains, the “choice card may define the at least one history-of-communications segment and the at least one choice-item segment.”⁹¹ While the specification may teach certain exemplary embodiments in which a “choice-item segment” is displayed within a “choice card,” there is no basis to require a “choice card” for any and all choice-item segments, as Comcast’s proposal would dictate.⁹² Indeed,

⁸⁹ ‘916 Patent, claim 1.

⁹⁰ *Id.* at 5:8-12.

⁹¹ *Id.* at 6:4-7.

⁹² *Phillips*, 415 F.3d at 1323.

claim 1 recites a “choice-item segment” without any mention of a “choice card,” and such a “choice card” is only required by claims 7, 16, 22, and 23. In light of this claim language and the teachings of the specification, there is no evidence that the inventor intended to limit the claimed “choice-item segment” to a “choice card.”⁹³ Absent any proper basis for inserting the requirement of a “choice card” into the definition of a “choice-item segment,” Comcast’s proposal must be rejected.

3. “choice-items”

Claim Language	Sprint’s Construction	Comcast’s Construction
“choice-items” Claims 1, 2, 13, 14, 16, 22, and 23 of the ‘916 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	Options selectable by a user and listed in a choice-item segment of a choice card.

Claim 1 recites “the user interface comprising ... a display block including ... at least one choice-item segment displayed on the display screen, the at least one choice-item segment having a plurality of choice-items each (i) selectable by a user through actuation . . . and (ii) defining an action item related to the chat session.” Thus, the straightforward language of the claims already defines the term “choice-items,” and no judicial construction is necessary.

Here again, Comcast’s proposed construction attempts to improperly interject a “choice card” limitation into the claims. As explained *supra* with respect to “choice-item segment,” a “choice card” is merely one embodiment of the present invention disclosed by the specification and recited by only some of the asserted claims. The intrinsic evidence does not require that all “choice-items” be presented in the context of a “choice card,” and the inventor’s decision to omit the “choice card” from several of the broader claims (such as claim 1) demonstrates that she did

⁹³ *Id.* at 1315. (“[T]he presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.”)

not intend to limit all embodiments of the invention to “choice card” displays.⁹⁴ Thus, Comcast’s construction must be rejected.

4. “[scroll ... to move/scrolling] some of the choice-items into view on the display screen while [moving / scrolling] some of the communications out of view”

Claim Language	Sprint’s Construction	Comcast’s Construction
“scroll through the display block to move some of the choice-items into view on the display screen while moving some of the communications out of view” Claims 1 and 22 of the ‘916 Patent “scrolling of the choice-items into view on the display screen while scrolling some of the communications out of view” Claims 13 and 23 of the ‘916 Patent	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	[Scroll ... to move / scrolling] some of the choice-items into view on the display screen while [moving / scrolling] some of the communications out of view. Selection of a choice-item to move additional choice-items into view is not scrolling.

Claim 1 recites “a mechanism to allow the user to scroll through the display block to move some of the choice-items into view on the display screen while moving some of the communications out of view.” This claim language is understandable and unambiguous. No judicial claim construction is necessary.

Attempting to add an extraneous limitation not found in the claim language, Comcast argues that that the claimed “scrolling” does not include “selection of a choice-item to move additional choice-items into view.” This proposed negative limitation is confusing, unnecessary,

⁹⁴ *Id.*

and does not comport with the claim's actual requirements. The claims clearly define what is meant by "scrolling," i.e., "mov[ing] some of the choice-items into view on the display screen while moving some of the communications out of view."⁹⁵ There is no proper basis to rewrite or limit this straightforward claim language. Therefore, Comcast's construction must be rejected.

5. "card" and "choice card"

Claim Language	Sprint's Construction	Comcast's Construction
"card" Claims 7, 16, 22, and 23 of the '916 Patent	"Card" means "the layout of a display screen."	At least one tag that describes the layout of one display screen.
"choice card" Claims 7, 16, 22, and 23 of the '916 Patent.	"Choice card" does not require construction in light of the plain and ordinary claim language and in view of Sprint's construction of "card."	A card that has at least one title segment and at least one choice-item segment.

Claims 7, 16, 22, and 23 recite "displaying a block of a choice card . . . the display comprising (1) at least one history-of-communication segment . . . and (2) at least one choice-item segment having a plurality of choice-items."⁹⁶ For the claimed "choice card," the parties offered competing claim construction proposals for both a "card" and a "choice card." From Sprint's perspective, the Court need only construe "card." When the meaning of a "card" is properly understood, the jury will be well equipped to understand the additional aspects of "choice card" from the plain and ordinary meaning of the claim language.

Turning first to the proper meaning of "card," the specification explains that a "tag that describes the layout of one display screen is typically referred to as a card."⁹⁷ The specification further explains that "tags" are instructions that are interpreted into a "translated document

⁹⁵ '916 Patent, claim 1.

⁹⁶ '916 Patent, claim 23.

⁹⁷ '916 Patent, 2:30-32.

[displayed] on the display screen.”⁹⁸ Therefore, the instructions defining the layout of display screen (i.e., a “tag”) must be interpreted to produce a display screen having a layout defined by the instruction. While Comcast’s construction (which equates a card to a “tag”) tracks language found in the specification, it fails to account for this “displaying” context in which this term is used in the claims. Because the claim language uses the term “card” in the context of displaying a screen with a defined layout, Sprint proposes that a “card” should be construed to mean “the layout of a display screen.”

For the claimed “choice card,” no further construction is necessary given the straightforward claim language. For instance, claim 7 provides that a “choice card include[s] the at least one history-of-communications segment and the at least one choice-item segment.” For this claim, the jury will easily understand that “choice card” is a card including at least one history-of-communication segment and at least one choice-item segment. While Comcast suggests that a “choice card” means a “card that has at least one title segment and at least one choice-item segment,” such a definition (and its required “title segment”) is inconsistent with the actual claim language and should be rejected. Because the claims already define the term “choice card,” no further claim construction is necessary.

I. Overview of the ‘666 Patent Inventions Relating to Group Messaging and to Voice-To-Text Inventions

The ‘666 Patent was filed in October 2001 and discloses a number messaging innovations. In a first embodiment, the disclosed invention is directed to creating a voicemail message and sending it to a predefined group. In a second embodiment, the disclosed invention is directed to methods for forwarding voicemail messages to a preferred location, as well as methods for converting the voicemail to text before forwarding.

⁹⁸ *Id.* at 2:26-30.

As to the first mentioned embodiment, the invention covers a method for sending a message through a telecommunications network. This embodiment involves receiving a call request, which includes “a management code” and “a destination identifier of a first type, such as a telephone number.”⁹⁹ In this embodiment, the destination identifier is converted to “a destination identifier of a second type, such as an e-mail address associated with the destination subscriber entity....”¹⁰⁰ From there, a message is forwarded to the distribution listing using the identifiers of a second type (*e.g.*, an email address or other identifier). As one example, this embodiment covers sending a voicemail to a distribution group using email addresses or some other “second” type of identifier.

In the second mentioned embodiment, the invention involves converting a voicemail into a textual message. This allows the recipient to receive the voicemail using any desired method (*e.g.*, in the text of an email, as an attachment to an email, as a text message to a mobile phone, etc.). In particular, this embodiment involves receiving a call request that is based on a first type of identifier (*e.g.*, a call request that includes a telephone number). The call request is further associated with a management code for managing aspects of the service. From here, the calling party is prompted to leave a voicemail, which is subsequently forwarded to the recipient using a “second” identifier associated with the first identifier (*e.g.*, an email address associated with the dialed number, a mobile telephone number, etc.). Generally speaking, the voicemail may be sent to the recipient as an attachment, or alternatively converted into a textual message. In this embodiment, the voicemail is optionally converted into a textual message before being forwarded to the recipient.

⁹⁹ ‘666 Patent (D.I 52-7) at 1:59-65.

¹⁰⁰ *Id.* at 1:65-2:2.

J. Disputed Terms from the '666 Patent

Here, the parties dispute three terms and phrases.¹⁰¹

1. "A method for providing a message to at least one [network/subscriber] entity"

Claim Language	Sprint's Construction	Comcast's Construction
"A method for providing a message to at least one network entity" (claim 1)	No construction necessary.	"A method for providing an e-mail message to at least one network entity" (claim 1)
"A method for providing a message to at least one subscriber entity" (claim 31)	The claim language should be afforded its plain and ordinary meaning.	"A method for providing an e-mail message to at least one subscriber entity" (claim 31)

The parties disagree over the meaning of the term "message." Under Comcast's construction, the broadly claimed "message" should be limited to one type of message disclosed in the patent—an e-mail message. But there is no reasonable dispute over the breadth of the term "message." Without an express definition or other manifest statement of exclusion in the patent, the plain and ordinary meaning of "message" controls this dispute.¹⁰²

Importantly, when the inventors wanted to claim e-mail messages, they did so expressly and without equivocation. For instance, claim 7, which depends from claim 1, expressly states that the destination identifiers of the second type "is an e-mail address." Likewise, unasserted claim 13 expressly uses the exact same language Comcast seeks for its construct, suggesting that the two are not one and the same—"a] method for providing an e-mail message to at least one network entity in a telecommunications network." This same language appears in other

¹⁰¹ Sprint initially disputed the meaning of five terms of the '666 Patent in the Joint Claim Construction Chart filed October 4, 2013. Again, to narrow the issues for the Court, Sprint no longer intends to assert claims 11 and 12 of the '666 Patent, rendering the claim construction issues as to those claims moot.

¹⁰² See *Phillips*, 415 F.3d at 1312-13.

unasserted claims as well, including unasserted claim 37.¹⁰³

Therefore, there is no support for Comcast's narrowing construction. Instead, the term "message" of claims 1-12 and 31-36 should not be limited to a specific type of message and, instead, the plain and ordinary meaning should apply.

2. "management code" and "destination identifier[s] of a/the second type"

Claim Language	Sprint's Construction	Comcast's Construction
"management code" Claims 1, 5, 31, and 35.	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	A code dialed by a calling subscriber to manage sending an e-mail.
"destination identifier[s] of a/the second type" Claims 1, 5, 31, and 35.	No construction necessary. The claim language should be afforded its plain and ordinary meaning.	An e-mail address.

Here, the parties again dispute the scope of the otherwise broad claims. Sprint proposes constructions based on the plain meaning of the terms "management code" and "destination identifier[s] of a/the second type." Comcast, again, seeks to limit the invention to e-mail messages. For the reasons discussed above, Comcast's constructions should be rejected.

Specifically, as explained in the patent, a management code is a set of digits, such as "*62," that is used to "route a call to voice command platform" and, further, to determine "a destination identifier of a second type. . . ."¹⁰⁴ While it is certainly true that one very specific

¹⁰³ See *Id.* at claim 37 (claiming, amongst other things, "A method for providing an email message to at least one network entity in a telecommunications network").

¹⁰⁴ See *Id.* at 10:9-15 ("Referring to FIG. 5, the exemplary profile management code template 150 indicates that the dialed digit sequence '*62' means SCP 106 should route a call to voice command platform 110 and, further, that a destination identifier of a second type should be determined based on a destination identifier of a first type and in response to the management code '*62' indicated in a TCAP request message.")

embodiment discusses using a management code to select e-mail addresses,¹⁰⁵ there is no legal or factual support for incorporating that embodiment into the claims. Indeed, the specification makes clear that a management code is nothing more than “a predetermined type of code,” which “in [one] example,” can be an “e-mail management code.” Further, the specification differentiates among the claimed “management codes” and other disclosed “e-mail management codes.”¹⁰⁶ That the claims do not recite “e-mail management code” demonstrates the fatal flaw in Comcast’s proposal.¹⁰⁷ Comcast’s attempt to insert “email” limitations in the claims must be rejected.¹⁰⁸

V. CONCLUSION

For the reasons set forth herein, Sprint respectfully requests this Court to construe the claim terms in accordance with its proposed constructions.

¹⁰⁵ See *Id.* at 11:63-12:2 (“Alternatively, a management code may be used to specify which e-mail address should be used. For instance, a user of subscriber terminal 102 may select a code ‘*621’ to specify that in addition to an e-mail address of a recipient terminal, the user would like the message to be also sent to a home e-mail address associated with a user of the recipient terminal. Different embodiments are also possible.”)

¹⁰⁶ *Id.* at 12:27-29.

¹⁰⁷ *Id.* at 13:25-27.

¹⁰⁸ As previously mentioned, dependent claim 7 recites “the method of claim 1, wherein each of the plurality of destination identifiers of the second type is an e-mail address.” Claim differentiation strongly counsels against Comcast’s proposed narrowing. *Phillips*, 415 F.3d at 1315.

Dated: November 1, 2013

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CERTIFICATE OF SERVICE

I certify that on the date set forth below the foregoing Sprint's Opening Claim Construction Brief was electronically filed pursuant to the Court's electronic filing system, and that the document is available for downloading and viewing from the Court's electronic filing system. Notice of this filing will be sent to all registered counsel of record by operation of the Court's electronic filing system.

Dated: November 1, 2013

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