UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BROADCOM CORPORATION, *et al.*,

Plaintiffs,

v.

NETFLIX, INC.

Defendants.

Case No. 3:20–cv–04677–JD

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

In accordance with Patent L.R. 4-3 and the Court's Standing Order for Claim Construction in Patent Cases Before Judge James Donato, Plaintiffs Broadcom Corporation and Avago Technologies International Sales PTE Ltd. and Defendant Netflix, Inc. (collectively the "Parties") jointly submit this Joint Claim Construction and Prehearing Statement (the "Statement") for U.S. Patent Nos. 7,266,079 (the "'079 Patent"); 8,259,121 ("the '121 Patent"); 8,959,245 ("the '245 Patent"); 8,270,992 ("the '992 Patent"); 6,341,375 ("the '375 Patent"); 8,572,138 ("the '138 Patent"); 6,744,387 ("the '387 Patent"); 6,982,663 ("the '663 Patent"); 9,332,283 ("the '283 Patent"), 8,548,976 ("the '976 Patent"); 7,457,722 ("the '722 Patent"); and 8,365,183 ("the '183 Patent"). This Statement contains information on claim construction for these patents under Patent L.R. 4-3 as follows.

I. STIPULATED CLAIM CONSTRUCTIONS UNDER PATENT L.R. 4–3(a)

To narrow their disputes, the Parties have met and conferred and have reached agreement on claim constructions for the following terms:

Term(s)	Patent	Claim(s)	Stipulated Construction
"flow control module"	'121	1, 35	"valve to control data flow"

"decoder devices" / "decoders"	'375	15	"decoders" in Steps (C) and (D) of Claim 15 refers to the "decoder devices" included in Steps (B) and (D) of Claim 15
"said exp-Golomb binarization comprises means for"	'387	4	Governed by 35 U.S.C. § 112(6). Function: "a) forming . . . b) determining . . . c) appending . . . d) determining . . . and e) appending . . ." Structure: binarization module 62 configured to perform at least Steps 4(a)-4(e).
"determining the least significant bits, of v−(N=2)−2**γ"	'387	4, 6	"determining the least significant bits, of v−(N−2)−2**γ"
"determining the number of bits, γ+1, required to represent v−(N−2) where γ= ⌊log2(v−(N−2))⌋ , v is the code symbol index value, and N is the threshold value, and then transforming y into a unary representation to create a result"	'387	4	"determining the number of bits, γ+1, required to represent v−(N−2) where γ= ⌊log2(v−(N−2))⌋ , v is the code symbol index value, and N is the threshold value, and thereafter transforming γ into a unary representation to create a result" No further construction is necessary regarding order of limitations.
"determining the number of bits, γ+1, required to represent v−(N=2) where γ= ⌊log2(v−(N−2))⌋ , v is the code symbol index value, and N is the threshold value, and then transforming γ into a unary representation to create a result"	'387	6	"determining the number of bits, γ+1, required to represent v−(N−2) where γ= ⌊log2(v−(N−2))⌋ , v is the code symbol index value, and N is the threshold value, and thereafter transforming γ into a unary representation to create a result" No further construction is necessary regarding order of limitations.
Claim 12's Preamble	'663	12	The preamble of Claim 12 is limiting.
"to generate to generate"	'283	1	"to generate"
"syntax element"	'283	1, 14, 16	"a value that is encoded to form part of the output bitstream"
"output bitstream"	'283	1, 3, 14, 16, 18	"a sequence of bits representing an encoded video signal"
"virtual machine"	'138	1, 9, 19, 22, 23	"software that emulates a physical computing platform"
"image instance"	'138	1, 19	"a snapshot, or copy, of installed and configured software"

"operational characteristics"	'183	1, 11, 16	"hardware and/or software characteristics"
"utilization criteria"	'183	1, 4, 5, 8, 9, 11–13, 15–18, 20	"criteria specifying a level of hardware and/or software utilization"
"wherein said codeword in compatible with at least one of an International Organization for Standardization/ International Electrotechnical Commission 14496-10 standard and an International Telecommunication Union-Telecommunications Standardization Sector Recommendation H.264"	'663	20	"wherein said codeword is compatible with a binarization scheme of an International Organization for Standardization/ International Electrotechnical Commission [ISO/IEC] 14496-10 standard or of an International Telecommunication Union-Telecommunications Standardization Sector [ITU-T] Recommendation H.264"
"employ [a/the] single binary tree"	'283	1, 14, 16	"employ [a/the] common binary tree [when processing at least one P slice and at least one B slice to generate the output bitstream]."
"a compute program"	'079	38	"a computer program"

II. DISPUTED TERMS, PROPOSED CONSTRUCTIONS, AND SUPPORTING EVIDENCE UNDER PATENT L.R. 4–3(b)

In accordance with Patent L.R. 4–3(b) and the Court's Standing Order on Claim Construction, the Parties identify the following ten terms for construction[1]:

Claim Terms	Plaintiffs' Proposed Construction and Support	Defendant's Proposed Construction and Support
"display pipeline" ('121 Patent, Claims 1-4, 33, 35, 36)	**Proposed Construction:** No construction necessary.	**Proposed Construction:** "a series of video processing modules"

[1] Copies of the patents for which the parties have requested the Court to construe terms are attached to this Joint Statement — Ex. 1: '121 Patent; Ex. 2: '387 Patent; Ex. 3: '663 Patent; Ex. 4: '283 Patent; Ex. 5: '138 Patent.

	Plain and ordinary meaning which, in the context of the patent, is "chain of multiple nodes" **Intrinsic Evidence:** '121 Patent at 6:42–50, 7:36–38, 8:46–54, Fig. 4. '121 Patent File History Response (Dec. 9, 2008). **Extrinsic Evidence:** Declaration of Dr. Nathaniel Polish	**Intrinsic Evidence:** 1:41-49 1:66-2:4 2:5-9 2:55-59 3:23-25 4:45-47 4:54-58 5:41-44 5:50-53 6:15-17 6:42-53 7:1-4 7:13-19 7:36-44 8:6-8 8:25-33 8:46-54 9:45-64 10:23-26 11:20-24 Figs. 4, 5, 6, 8 U.S. Prosecution History: pp. 535-36 (Dec. 9, 2008 Response to Final Office Action, pp. 15-16); p. 392 (Office Action of June 23, 2010, p. 3); IPR 2020-01647: Patent Owner's Preliminary Response; Decision Denying Institution of *Inter Partes* Review; U.S. Pat. App. No. 10/300,370 at: Figs. 11A, 14 Pg. 14, ¶ [57]; Pg. 9, ¶ [39] Pg. 22, ¶ [89]; U.S. Pat. App. No. 10/114,798 at Pgs. 21-22, ¶¶ [66 & 68]; U.S. Prov. App. No. 60/420,347 at Pg. 18, ¶ [66] **Extrinsic Evidence:** IPR 2020-01647: Declaration of James A. Storer;

		IBM Dictionary of Computing (1994), p. 512 ("pipeline"); U.S. Patent No. 4,187,539 to Eaton at 1:8-22; Computer Desktop Encyclopedia (9th ed. 2001) ("pipeline processing"); "Pipe (Pipelined Image-Processing Engine)," Journal of Parallel and Distributed Computing 2, pp. 50-78 (1995); Computer Graphics (2nd ed. 1992) (18.4.1 "Pipelining"); IEEE Standard Glossary of Computer Hardware Terminology (1994), p.69 ("pipeline processing," "pipeline processor," "pipelining"); Microsoft Press Computer Dictionary (1991) ("pipelining"); The Computer Glossary (7th ed. 1995), p. 302 ("pipeline processing"); Webster's New World Dictionary of Computer Terms (1983), p.193 ("pipelining"); U.S. Patent No. 5,798,770 to Baldwin at 5:15-25; U.S. Patent No. 6,628,243 to Lyons at 6:12-55 & Figs. 2-6; U.S. Patent No. 7,054,867 to Bosley at 4:49-55, 5:22-27; U.S. Patent No. 6,489,953 to Chen at 3:16-33 Declaration of Prof. K.K. Ramakrishnan
"means for determining if a code symbol index value is less than a threshold value" ('387 Patent, Claim 3)	**Proposed Construction** Governed by 35 U.S.C. § 112(6). Function: determining if a code symbol index value is less than a threshold value Structure is disclosed in Fig. 2,	**Proposed Construction** Function: determining if a code symbol index value is less than a threshold value Structure: binarization module 62 and step 102 of Figure 4 as described at 7:46 and 7:63-66

	which describes an encoder, and in particular binarization block 62 in conjunction with Fig. 4, and Fig. 4, step 102, Col. 4, lines 1-13, Tables 3 and 4, Col. 6, line 26 through Col. 8, line 23; and Claim 1. **Intrinsic and Extrinsic Evidence** See e.g., '387 patent at: 4:1-13; 6:26–8:23; Tables 3-4; Figs. 2, 4; Claims 1-2. Dr. Richardson may provide expert testimony regarding the level of skill of a person having ordinary skill in the art for the field of the '387 Patent, the meaning of this term, binarization modules within encoders, as well as rebuttal testimony (if appropriate).	**Intrinsic and Extrinsic Evidence** 1:6-11 2:15-34 4:01-05 6:26-8:10 Fig. 2 Fig. 4. Prior claim construction briefing (including extrinsic evidence cited therein) from IPR 2017-00963; IPR 2017-01181. Prior claim construction briefing (including extrinsic evidence cited therein) from IPR 2017-00963; IPR 2017-01181; Broadcom Corp v. Amazon (16-cv-1774) (C.D. Cal); Broadcom Corp v. Sony Corp (16-cv-1052) (C.D. Cal.); Avago Technologies General IP (Singapore) Pte. Ltd. v. ASUSTeK Computer, Inc. et al. (No. 3:15-cv-04525) (N.D. Cal.) Expert testimony of Prof. Michael Orchard regarding the understanding of a person of ordinary skill regarding corresponding structure and the intrinsic evidence, technical background, and rebuttal of any incorrect positions or expert testimony asserted by Broadcom.
"means for constructing a codeword using a unary binarization if said code symbol index value is less than a threshold value" ('387 Patent, Claim 3)	**Proposed Construction** Governed by 35 U.S.C. § 112(6). Function: constructing a codeword using a unary binarization if said code symbol index value is less than said threshold value	**Proposed Construction** Function: constructing a codeword using a unary binarization if said code symbol index value is less than said threshold value

	Structure is disclosed in Fig. 2, which describes an encoder, and in particular binarization block 62 in conjunction with Fig. 4, and Fig. 4, steps 102, 104 and 112, Col. 4, lines 1-13, Tables 3 and 4, Col. 6, line 26 through Col. 8, line 23; and Claim 1. **Intrinsic and Extrinsic Evidence** See e.g., '387 patent at: 4:1-13; 4:52–54; 6:26–8:23; Tables 3-4; Figs. 2, 4; Claims 1-2. Dr. Richardson may provide expert testimony regarding the level of skill of a person having ordinary skill in the art for the field of the '387 Patent, the meaning of this term, binarization modules within encoders, as well as rebuttal testimony (if appropriate).	Structure: binarization module 62 and steps 102 and 104 of Figure 4 as described at 7:46-47 and 7:61-8:1 **Intrinsic and Extrinsic Evidence** 1:6-11 2:15-34 4:01-05 6:26-8:10 Fig. 2 Fig. 4. Prior claim construction briefing (including extrinsic evidence cited therein) from IPR 2017-00963; IPR 2017-01181. Prior claim construction briefing (including extrinsic evidence cited therein) from IPR 2017-00963; IPR 2017-01181; Broadcom Corp v. Amazon (16-cv-1774) (C.D. Cal); Broadcom Corp v. Sony Corp (16-cv-1052) (C.D. Cal.); Avago Technologies General IP (Singapore) Pte. Ltd. v. ASUSTeK Computer, Inc. et al. (No. 3:15-cv-04525) (N.D. Cal.) Expert testimony of Prof. Michael Orchard regarding the understanding of a person of ordinary skill regarding corresponding structure and the intrinsic evidence, technical background, and rebuttal of any incorrect positions or expert testimony asserted by Broadcom. A. Moffat et al., Compression and Coding Algorithms, Kluwer Academic Publishers (Mar. 31, 2002) at Ch. 3

"means for constructing a codeword using a exp-Golomb binarization if said code symbol index value is [not] less than a threshold value" ('387 Patent, Claim 3)	**Proposed Construction** Governed by 35 U.S.C. § 112(6). Function: constructing a codeword using a exp-Golomb binarization if said code symbol index value is not less than said threshold value Structure is disclosed in Fig. 2, which describes an encoder, and in particular binarization block 62 in conjunction with Fig. 4, and Fig. 4, steps 102, 106, 108, 110, 112; Col. 4, lines 1-13, Tables 3 and 4, Col. 6, line 26 through Col. 8, line 23; and Claims 1-2. **Intrinsic and Extrinsic Evidence** See e.g., '387 patent at: 4:1–13; 4:52–54; 6:26–8:23; Tables 3-4; Figs. 2, 4; Claims 1-2. Dr. Richardson may provide expert testimony regarding the level of skill of a person having ordinary skill in the art for the field of the '387 Patent, the meaning of this term, binarization modules within encoders, as well as rebuttal testimony (if appropriate).	**Proposed Construction** Function: constructing a codeword using a exp-Golomb binarization if said code symbol index value is [not] less than said threshold value Structure: binarization module 62 and steps 106, 108, and 110 of Figure 4 as described at 7:49-60 and 8:1-8:10. **Intrinsic and Extrinsic Evidence** 1:6-11 2:15-34 4:01-05 5:54-67 6:26-8:10 Fig. 2 Fig. 4 Prior claim construction briefing (including extrinsic evidence cited therein) from IPR 2017-00963; IPR 2017-01181. Prior claim construction briefing (including extrinsic evidence cited therein) from IPR 2017-00963; IPR 2017-01181; Broadcom Corp v. Amazon (16-cv-1774) (C.D. Cal); Broadcom Corp v. Sony Corp (16-cv-1052) (C.D. Cal.); Avago Technologies General IP (Singapore) Pte. Ltd. v. ASUSTeK Computer, Inc. et al. (No. 3:15-cv-04525) (N.D. Cal.) Potential expert testimony of Prof. Michael Orchard regarding

		the understanding of a person of ordinary skill regarding corresponding structure and the intrinsic evidence, technical background, and rebuttal of any incorrect positions or expert testimony asserted by Broadcom. Teuhola, A Compression Method for Clustered Bit-Vectors, Information Processing Letters, Vol. 7, No. 6 (Oct. 1978) at 1–4; D. Marpe et al., Improved CABAC, VCEG-O18 (Dec. 4, 2001) at 1–2; U.S. Patent No. 6,304,607 to Talluri et al. at 4:43–60, 5:08–6:14, Table 1, Table 2; P. Howard, Interleaving Entropy Codes, IEEE (June 11, 1997) at 45–46, 48; A. Moffat et al., Compression and Coding Algorithms, Kluwer Academic Publishers (Mar. 31, 2002) at Ch. 3.
’663 Patent, Claim 12 (Entire Claim)	**Proposed Construction:** The claim should be given its plain and ordinary meaning, in the context of the patent. No further construction is necessary regarding order of limitations. **Intrinsic Evidence:** ’663 patent at: 1:38–62, 3:21–39, 4:42–50, 5:41–54, 6:24–28, 6:44–7:13; Fig. 4; Tables 1 and 2; Claims 1, 11–13, 18–19, 21.	**Proposed Construction:** Steps recited within this claim must be performed in order **Intrinsic Evidence:** ’663 Patent at Abstract, Figs. 4-6, 1:37-2:33, 3:10-20, 4:46-7:12, 7:30-10:3; ’387 Patent at Abstract, Fig. 4, 1:36-2:34, 3:7-18, 4:52-8:10; ’663 File History: Non-final Rejection dated Dec. 2, 2004 at 2-5; ’663 File History: Amendment dated Mar. 4, 2005 at 4, 6-7, 9, 11-19. Prior claim construction briefing (including extrinsic evidence

		cited therein) from ITC No. 337-TA-837, IPR 2021-00468, IPR 2017-00964, IPR 2017-01182. **Extrinsic Evidence:** Prior claim construction briefing (including extrinsic evidence cited therein) from ITC No. 337-TA-837, IPR 2021-00468, IPR 2017-00964, IPR 2017-01182, *Barnes & Noble, Inc. v. LSI Corp.*, (No. 3:11-cv-2709) (N.D. Cal.); *Avago Technologies General IP (Singapore) Pte. Ltd. v. ASUSTeK Computer, Inc. et al.* (No. 3:15-cv-04525) (N.D. Cal.), *Broadcom Corp. et al v. Amazon.com, Inc. et al.* (No. 8:16-cv-01774-JVS-JCG) (C.D. Cal.), *Broadcom Corp. et al v. Sony Corp. et al.* (No. 8:16-cv-01052-JVS-JCG) (C.D. Cal.) Lowell Winger, JVT-C162 (May 2, 2002); "Draft ITU-T Recommendation H.264," Joint Video Team, JVT-C167 (May 10, 2002); U.S. Patent No. 6,236,960 at Figs. 5 & 7, 11:11–12:30, 13:15–54; Expert testimony of Prof. Michael Orchard regarding the understanding of a person of ordinary skill regarding the intrinsic evidence, technical background, and rebuttal of any incorrect positions or expert testimony asserted by Broadcom.
"a fourth pattern in said first portion based on said index value in response to said index value	**Proposed Construction:** Plain and ordinary meaning. No construction of "[generating] a fourth pattern in said first portion based on said index value in	**Proposed Construction:** Indefinite **Intrinsic Evidence:**

being below said threshold" ('663 Patent, Claim 13)	response to said index value being below said threshold" needed. **Intrinsic Evidence:** '663 patent at: Tables 3–4, 6:50–7:13. **Extrinsic Evidence:** Declaration of Dr. Iain Richardson	'663 Patent at Abstract, Figs. 3-6, 2:15-33, 3:10-20, 4:1-12; 4:13-33; 4:46-7:12; 7:30-10:3 Prior claim construction briefing (including extrinsic evidence cited therein) from ITC No. 337-TA-837, IPR 2021-00468, IPR 2017-00964, IPR 2017-01182 **Extrinsic Evidence:** Prior claim construction briefing (including extrinsic evidence cited therein) from ITC No. 337-TA-837, IPR 2021-00468, IPR 2017-00964, IPR 2017-01182, *Barnes & Noble, Inc. v. LSI Corp*., (No. 3:11-cv-2709) (N.D. Cal.); *Avago Technologies General IP (Singapore) Pte. Ltd. v. ASUSTeK Computer, Inc. et al*. (No. 3:15-cv-04525) (N.D. Cal.), *Broadcom Corp. et al v. Amazon.com, Inc. et al*. (No. 8:16-cv-01774-JVS-JCG) (C.D. Cal.), *Broadcom Corp. et al v. Sony Corp. et al*. (No. 8:16-cv-01052-JVS-JCG) (C.D. Cal.). Lowell Winger, JVT-C162 (May 2, 2002); "Draft ITU-T Recommendation H.264," Joint Video Team, JVT-C167 (May 10, 2002) Declaration of Prof. Michael Orchard
"wherein said [second/third] portion is void in response to said index value being below said threshold"	**Proposed Construction:** Plain and ordinary meaning, which in the context of the patent is "wherein said [second/third] portion does not contribute any bins to the codeword in response	**Proposed Construction:** Indefinite **Intrinsic Evidence:**

('663 Patent, Claims 18, 19)	to said index value being below said threshold." **Intrinsic Evidence:** '663 patent at: Tables 3–4, 6:50–7:13. **Extrinsic Evidence:** *Void*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1993). *Void*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000). Declaration of Dr. Iain Richardson	'663 Patent at Abstract, Figs. 3-6, 2:15-33, 3:10-20, 4:1-12; 4:13-33; 4:46-7:12; 7:30-10:3 Prior claim construction briefing (including extrinsic evidence cited therein) from ITC No. 337-TA-837, IPR 2021-00468, IPR 2017-00964, IPR 2017-01182. **Extrinsic Evidence:** Prior claim construction briefing (including extrinsic evidence cited therein) from ITC No. 337-TA-837, IPR 2021-00468, IPR 2017-00964, IPR 2017-01182, *Barnes & Noble, Inc. v. LSI Corp*., (No. 3:11-cv-2709) (N.D. Cal.); *Avago Technologies General IP (Singapore) Pte. Ltd. v. ASUSTeK Computer, Inc. et al.* (No. 3:15-cv-04525) (N.D. Cal.), *Broadcom Corp. et al v. Amazon.com, Inc. et al.* (No. 8:16-cv-01774-JVS-JCG) (C.D. Cal.), *Broadcom Corp. et al v. Sony Corp. et al.* (No. 8:16-cv-01052-JVS-JCG) (C.D. Cal.). Lowell Winger, JVT-C162 (May 2, 2002); "Draft ITU-T Recommendation H.264," Joint Video Team, JVT-C167 (May 10, 2002); Declaration of Prof. Michael Orchard
"wherein the second syntax element specifies the PU partition mode for the selected CU, wherein the PU partition mode is based on a	**Proposed Construction:** Plaintiffs object to Defendant's request to construe this entire phrase without specifying which portion(s)/element(s) it contends require construction.	**Proposed Construction:** Indefinite **Intrinsic Evidence:** 17:19-23

size N×N PU when the selected CU is a smallest CU (SCU) of the plurality of CUs and is based on a different size PU than the size N×N PU when the selected CU is another CU than the SCU of the plurality of CUs" ('283 Patent, Claims 1, 14)	No construction necessary. Plain and ordinary meaning. **Intrinsic Evidence:** '283 patent at: 16:41–19:12, Figs. 11–13. **Extrinsic Evidence:** Declaration of Dr. Iain Richardson	18:12-54 19:62-20:18 Figs. 12, 13, 14 & 15 Claims 2 &17 **Extrinsic Evidence:** Declaration of Dr. Vivienne Sze
"virtual machine manager" ('138 patent, claims 1, 19)	**Proposed Construction:** No construction necessary. Plain and ordinary meaning. **Intrinsic Evidence:** '138 Patent at 32:60-62. **Extrinsic Evidence:** MICROSOFT COMPUTER DICTIONARY 327 (5th ed. 2002). INTRODUCTION TO VMWARE INFRASTRUCTURE 44 (2006-2007). MERRIAM-WEBSTER DICTIONARY [706, 1993]	**Proposed Construction:** "software program that manages one or more virtual machines" **Intrinsic Evidence:** Claim 1 32:59-67 33:21-23 33:39-41 Fig. 24
"rules engine" ('138 patent, claims 11, 14, 19)	**Proposed Construction:** No construction necessary. Plain and ordinary meaning. **Intrinsic Evidence:**	**Proposed Construction:** "software that performs logical reasoning using 'if/then' rules" **Intrinsic Evidence:** 22:20-24

	’138 Patent at 22:56-58; 25:60-65; 2 **Extrinsic Evidence:** MICROSOFT COMPUTER DICTIONARY 193 (5th ed. 2002).	22:38-49 22:54-62 25:60-66 27:15-34 27:56-28:11 Fig. 20 **Extrinsic Evidence** Computer Dictionary, Microsoft Press, 2d Ed. (1994) (cross-referencing “rule-based system” with “expert system”) Computer Dictionary, Microsoft Press, 5th Ed. (2002) (cross-referencing “rule-based system” with “expert system”)

III. IDENTIFICATION OF CASE-DISPOSITIVE TERMS UNDER PATENT L.R. 4–3(a)

A. Plaintiffs’ Position:

None of the disputed terms will be case dispositive. Plaintiffs disagree with Defendant’s statements in Subparagraph B below regarding the alleged dispositive nature of each of the terms listed with respect to Defendant’s alleged non-infringement. Regarding Defendant’s statements regarding invalidity, Plaintiffs state only that a finding of indefiniteness as to a claim term applies only to claims including such term and are not dispositive of the case or all claims of a particular patent.

Plaintiffs object to Defendant’s attempt to reserve the right to later seek construction of “one or more underutilized computer devices” in the ’183 Patent or any other term not set forth in this Joint Statement. Neither party identified “one or more underutilized computer devices” in their Patent L.R. 4-1 or 4-2 disclosures.

B. Defendant’s Position:

The following disputed claim terms are dispositive of non-infringement:

- “display pipeline”

- "means for determining if a code symbol index value is less than a threshold value"
- "means for constructing a codeword using a unary binarization if said code symbol index value is less than a threshold value"
- "means for constructing a codeword using a exp-Golomb binarization if said code symbol index value is [not] less than a threshold value"
- Claim 12 (Entire Claim)
- "virtual machine manager"
- "rules engine"

The following disputed claim terms are dispositive of invalidity:

- "wherein the second syntax element specifies the PU partition mode for the selected CU, wherein the PU partition mode is based on a size N×N PU when the selected CU is a smallest CU (SCU) of the plurality of CUs and is based on a different size PU than the size N×N PU when the selected CU is another CU than the SCU of the plurality of CUs"
- "a fourth pattern in said first portion based on said index value in response to said index value being below said threshold"
- "wherein said [second/third] portion is void in response to said index value being below said threshold"

On May 17, 2021, the Patent Trial and Appeals Board issued an institution decision for the '183 patent. The PTAB construed "one or more underutilized computer devices" to mean "one or more computer devices that have a utilization level below, or less than, a specified utilization level." Accordingly, it found that Claim 1 "requires both a determination that 'one or more underutilized computer devices exist on the list of suitable computer devices' and that the 'one or more underutilized computer devices hav[e] a suitable level of utilization for performing the job.'" IPR2021-00098. This decision is not yet final. Netflix reserves the right to move for leave to supplement its proposed terms for claim construction in light of a final decision.

IV. ANTICIPATED LENGTH OF CLAIM CONSTRUCTION HEARING

The Parties request that the Court provide three hours for the hearing.

V. PROPOSED CLAIM-CONSTRUCTION WITNESSES

The parties plan to submit expert declarations with their claim-construction briefs as outlined in Section II above. The parties do not intend to call live witnesses at the claim-construction hearing.

Dated: May 18, 2021

Respectfully submitted,

/s/ *Richard L. Wynne, Jr.*

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Dated: May 18, 2021

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