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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 BROADCOM CORPORATION, et al.,

24 Plaintiffs,

25 v.

26 NETFLIX, INC.,

27 Defendant.

Case No. 3:20-cv-04677-JD

**DEFENDANT NETFLIX, INC.'S
RESPONSIVE CLAIM-CONSTRUCTION
BRIEF**

Date: TBD
Time: TBD
Dept.: Courtroom 11, 19th Floor
Judge: Honorable James Donato

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I. INTRODUCTION

Plaintiffs have proposed a series of constructions divorced from the plain and ordinary meaning to broaden the scope of the asserted claims beyond that granted by the U.S. Patent and Trademark Office. Netflix's proposed constructions accord with the plain and ordinary meaning and express definitions set forth in the specification and prosecution history, without rewriting claim language. Netflix respectfully requests that the Court adopt its proposed constructions.

II. DISPUTED CLAIM TERMS

A. '121 Patent

1. "display pipeline" (claims 1-4, 33, 35, 36 (all asserted claims))

Broadcom's Proposal	Netflix's Proposal
Plain and ordinary meaning which, in the context of the patent, is "chain of multiple nodes"	"a series of video processing modules"

Netflix's construction of "display pipeline" hews to the intrinsic record and articulates what a person of ordinary skill in the art would understand a "display pipeline" to entail. *See* Ex. 1¹ (Ramakrishnan Decl.) ¶¶ 14-34. Broadcom's proposed construction, by contrast, is not a plain meaning at all and improperly reads out both the concept of a "display" and a "pipeline," rendering the term meaningless. And Broadcom's position directly contradicts its own admissions during prosecution that "display pipelines" (1) are made up of "video processing module[s]" where each module "perform[s] a specific processing task prior to forwarding the processed data to the next" (*i.e.*, in a series); and (2) are "completely unrelated" to routing data between general-purpose computers. *Id.* ¶¶ 21-29.

To overcome the patent examiner's rejection of claims over a combination of references including U.S. Patent No. 7,054,867 to Bosley et al. ("Bosley"), Broadcom argued during prosecution that a "display pipeline" is comprised of "video processing modules." *See id.* Unlike the '121 patent (which is directed at a network for *processing* data), Bosley is directed at a network for *routing* various types of data, including streaming data, using common computing devices like laptop computers. *Id.* ¶¶ 24, 28; Ex. 2 at 15 ('121 Prosecution History). Indeed,

¹ All references to Exhibits ("Ex.") are to the Declaration of David J. Rosen in Support of Defendant Netflix, Inc.'s Responsive Claim Construction Brief.

Broadcom argued that Bosley was “completely unrelated to display pipelines,” and that “Bosley’s network routing and indexing system and method are completely unrelated to nodes of a display pipeline.” Ex. 2 at 15. Broadcom explained, “[a]s is known in the art and disclosed in Applicant’s Specification, **display pipeline nodes are made up of video processing modules that perform a specific task prior to forwarding the processed data to the next node in the pipeline for further processing.**” *Id.* (emphasis added). Broadcom then distinguished the “display pipelines” in the ’121 patent from the network connections disclosed in Bosley:

A video processing module that perform [*sic*] a specific processing task prior to forwarding the processed data to the next node in the dynamically configured display pipeline is different than Bosley’s disclosure of routing data related to “publishing, searching, downloading, and streaming” (Bosley, Abstract) from a sending desktop computer through various local neighborhoods to a receiving desktop computer. The Applicant further notes that nowhere in Bosley is there any disclosure regarding the ***nodes actually processing data sent or received at each node***. In fact, the term “processing” does not even appear in Bosley.”

Id. at 15-16 (naming “desktop computers, or other larger computers” as examples of “nodes in the network” disclosed in Bosley). Thus, according to Broadcom’s own statements during prosecution, a “display pipeline” is comprised of a series of “video processing modules,” which must “actually process[] data sent or received,” and which are distinct from “desktop computers, or larger computers” that only route data to other computers in the network. *Id.* at 15.

Seeking to recapture the scope it disclaimed, Broadcom attempts to broaden “display pipeline” to include a “client device and one or more [web servers for transmitting video content]” linked in a content-delivery network “through which the various video, audio, and other files associated with the requested title are streamed.” Dkt. 52 (FAC) ¶ 77; *see also id.* ¶¶ 85, 87. But the accused network connections between computers that merely transmit or receive files are indistinguishable from the network connections in Bosley that Broadcom argued are not “display pipelines.” *See* Ex. 1 ¶ 29. Both “route data” related to “streaming,” and the accused “nodes” do not “actually process[] data sent or received.” Broadcom cannot expand the scope of a claim term beyond what it disclaimed in order to overcome prior art during prosecution, and its attempt fails. *See SpeedTrack, Inc. v. Amazon.com*, 998 F.3d 1373, 1379-81 (Fed. Cir. 2021) (holding that applicant’s arguments distinguishing prior art during prosecution constituted prosecution disclaimer).

Even looking beyond Broadcom's dispositive admissions, Broadcom's arguments lack merit. First, Broadcom's assertion that "display pipelines" neither consist of "modules" nor perform "video processing" functions contradicts the intrinsic record. Dkt 131 ("Opening Br.") at 2-3. The patent states repeatedly that the claims are directed at "a network environment for video processing modules," and that the "nodes" that form a "display pipeline" are "modules that process video information," '121 patent at 4:45-47, 7:15-17; *see also* Ex. 1 (Ramakrishnan Decl.) ¶¶ 18-20. Indeed, Broadcom stated in its Patent Local Rule 4-2 disclosures that "nodes," in the context of the '121 patent, mean "modules that process video information." *See* Ex. 3 at 2.

Second, the evidence confirms that a "display pipeline" is comprised of "video processing modules" arranged in "a series." The '121 patent explains that the nodes are concatenated together in a serial fashion: "Each pipeline starts at one or more nodes" and "ends at one or more nodes," with "[f]unctions . . . added to the pipeline by cascading more nodes to the pipelines." '121 patent at 7:38-44; *see also id.* at 9:53-56 (explaining that "[v]ideo data enters a display pipeline at an 'entry node' designated **816A** and leaves at an 'exit node' designated **816B**," and "[a]ll the nodes in-between are referred to as 'intermediate nodes' or 'nodes' designated **816C**"); *id.* at Figs. 4, 5, 6. Extrinsic references² further confirm that a person of ordinary skill in the art would understand a "pipeline" to mean processing data serially. *See* Ex. 1 ¶¶ 30-33.³

In sum, the Court should adopt Netflix's proposed construction of "display pipeline."

B. '387 Patent

"means for determining if a code symbol index value is less than a threshold value" (claim 3)

Broadcom's Proposal	Netflix's Proposal
Governed by 35 U.S.C. § 112(6). Function: determining if a code symbol	<u>Function</u> : determining if a code symbol index value is less than a threshold value

² For example, the IBM Dictionary of Computing (10th ed. 1994) defines "pipeline" as "[a] serial arrangement of processors or a serial arrangement of registers within a processor. Each processor or register performs part of a task and passes results to the next processor; several parts of different tasks can be performed at the same time." Ex. 1 ¶ 32.

³ Finally, although Broadcom insists that a "display pipeline" consists of nodes arranged in a "chain," Opening Br. at 2, Broadcom has not articulated any substantive differences between a "series" of video processing modules and a "chain" of video processing modules. At bottom, each "node" of a "display pipeline" must "actually process[]" video data. Ex. 2 at 15. Whether that arrangement is a "chain" or a "series" is a distinction without a difference.

index value is less than a threshold value	<u>Structure</u> : binarization module 62 and step 102 of Figure 4 as described at 7:46 and 7:63-66
Structure is disclosed in Fig. 2, 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.	

“means for constructing a codeword using a unary binarization if said code symbol index value is less than a threshold value” (claim 3)

Broadcom’s Proposal	Netflix’s Proposal
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 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.	<u>Function</u> : constructing a codeword using a unary binarization if said code symbol index value is less than said threshold value <u>Structure</u> : binarization module 62 and steps 102 and 104 of Figure 4 as described at 7:46-47 and 7:61-8:1

“means for constructing a codeword using a exp-Golomb binarization if said code symbol index value is [not] less than a threshold value” (claim 3)

Broadcom’s Proposal	Netflix’s Proposal
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.	<u>Function</u> : constructing a codeword using a exp-Golomb binarization if said code symbol index value is [not] less than said threshold value <u>Structure</u> : binarization module 62 and steps 106, 108, and 110 of Figure 4 as described at 7:49-60 and 8:1-8:10.

The parties present three claim construction disputes that require this Court to identify the

1 corresponding structure for three means-plus-function limitations of Claim 3. All three disputes
 2 involve the same basic question: whether the corresponding structure is limited to the particular
 3 structure disclosed in the patent’s specification (which is contained in Columns 7 and 8) or
 4 whether it sweeps in the generic portions of the specification, which fail to instruct a POSITA
 5 how to carry out the claimed function. The case law and two prior district court claim
 6 construction rulings on claim 3 of the ‘387 patent⁴ point to the former. This Court should reach
 7 the same result.

8 The corresponding structure for each of means-plus-function limitation in Claim 3 is
 9 disclosed in Columns 7-8—specifically 7:46 and 7:63-66 for the first limitation; 7:46-47 and
 10 7:61-8:1 for limitation the second limitation; and 7:49-60 and 8:1-10 for the third limitation
 11 above. Broadcom, however, take a more expansive view and for the three limitations and throws
 12 in Figure 4 generally, 4:1-13, Tables 3-4, 6:26-8:23, and Claims 1-2.

13 The “scope of [means-plus-function] claim language is *sharply limited* to the structure
 14 disclosed in the specification and its equivalents.” *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d
 15 1292, 1304 (Fed. Cir. 2011) (emphasis added). The fact that “ordinarily skilled artisans could
 16 carry out the recited function in a variety of ways is precisely why claims written in ‘means-plus-
 17 function form must disclose the *particular structure* that is used to perform the recited function.”
 18 *See Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1385 (Fed. Cir. 2009). “[A] court
 19 must be cautious not to find an alternate structure just because a person skilled in the art would be
 20 capable of creating such a structure based on her knowledge and experience.” *Bristol Co. Ltd. v.*
 21 *Bosch RexRoth Inc.*, 684 F. Supp. 2d 1245, 1281 (D. Colo. 2010). Instead, “[t]he correct inquiry
 22 is to look at the *disclosure* of the patent and determine if one of skill in the art would have
 23 understood that *disclosure* to encompass [the structure], not simply whether one of skill in the art
 24 would have been able to [construct the structure].” *Med. Instrumentation & Diagnostics Corp. v.*
 25 *Elekta AB*, 344 F.3d 1205, 1212 (Fed. Cir. 2003) (emphasis in original).

26
 27 ⁴ See Ex. 4 at 12-18 (Markman Order from *Broadcom Corp. v. Sony Corp. et. al.*, Case No.
 28 SACV 16-1052 JVS (C.D. Cal. May 18, 2017)); Ex. 5 at 24-25 (Markman Order from *Broadcom*
Corp. v. Amazon.com Inc. et. al., Case No. SACV 16-1774 JVS (C.D. Cal. Sept. 1, 2017)).

1 **1. The Correct Structure is Limited to the Disclosure Contained in**
 2 **Columns 7-8 of the '387 Patent.**

3 The specification describes a single invention—a “new class of binary codes: hybrid
 4 unary-exp-Golomb codes.” ’387 Patent at 6:43-45. It then provides what it describes as “[a]
 5 detailed description of *the method* for constructing such hybrid binerization [sic].” *Id.* at 7:40-41;
 6 *see also id.* at 7:43-45 (“The construction of a codeword of this modified unary binarization table
 7 for a given index *v* is given by *the following algorithm...*”) (emphasis added). The patent
 8 proceeds to describe “the” algorithm at 7:45-60. This is the only part of the specification that
 9 describes a structure for carrying out the claimed functions. Thus, the structure corresponding to
 10 each means-plus-function term must include the corresponding parts of this algorithm.⁵

11 **2. Broadcom’s Proposed Structure is Without Basis.**

12 Broadcom argues “Figure 4 of the ’387 Patent, standing alone,” provides sufficient
 13 structure to support the means-plus-functions terms of Claim 3. Broadcom’s argument
 14 contravenes the patent, is refuted by underlying mathematics, and was rejected in a prior ruling.

15 **a. The ’387 Specification Identifies the Detailed Algorithm at**
 16 **7:40-60 as the Invention.**

17 As explained above, the ’387 Patent indicates that the algorithm at 7:40-60 is “*the*
 18 method” for constructing the invention’s hybrid binarization codes. *Id.* at 7:40-41 (emphasis
 19 added); *see also id.* at 7:43-45 (“The construction of a codeword of this modified unary
 20 binarization table for a given index *v* is given by the following algorithm.”). By contrast, Figure
 21 4 “show[s] generally” “a process for codeword construction.” *Id.* at 7:61-62. Even though the
 22 flow chart may “illustrate[] the steps” of the algorithm, Figure 4 is intended to “aid in
 23 understanding an embodiment of the present invention,” *Id.* at 2:40-41. Nowhere does the patent
 24 claim that Figure 4 defines the boundaries of the claimed invention.

25 ⁵ The correct construction recognizes other parts of the specification that make up the structure of
 26 the terms. Claim 3 discloses a “binarization system.” Thus, the binarization module 62 is a
 27 starting point for understanding the function, but it does not explain how to implement such a
 28 binarization system. Figure 4 does, however; it provides “a flowchart of a process for codeword
 construction” that outlines the basic steps of the algorithm. Its description is given at 7:61-8:10.
 The inventor thus included the steps of Figure 4 and their corresponding descriptions within the
 bounds of the claimed function, and so it must be captured in the proper constructions. But these
 disclosures, standing alone, are insufficient to provide structure to the means-plus-functions terms
 without looking to the method given by the patent at 7:40-60.

b. Figure 4 Alone Cannot Constitute Sufficient Structure for Claim 3 Because It Does Not Disclose a “Means for Constructing a Codeword Using a Exp-Golomb Binarization.”

When a patent claims a computer-implemented function, the patent “must disclose, at least to the satisfaction of one of ordinary skill in the art, enough of an algorithm to provide the necessary structure.” *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008). The inquiry is “whether one of skill in the art would understand the specification itself to disclose the structure, not simply whether that person would be capable of implementing that structure.” *Elektro AB*, 344 F.3d at 1212.

Figure 4 outlines a general process for codeword construction that does not, without the specific instructions for the actual algorithm at 7:40-60, provide sufficient structure for the functional terms of Claim 3. *See* Ex. 6 ¶¶ 56, 72 (Declaration of Prof. Michael Orchard in Support of Netflix’s Proposed Claim Constructions (“Orchard Decl.”)); *see also* Ex. 4 at 15. Figure 4 only specifies that codewords for index values at or above the threshold use an “Initial [sic] Prefix,” a “Unary Prefix,” and “Suffix Bits.” It fails to give direction on how to construct those parts. In fact, the general description given in Figure 4 would be just as consistent with use of Golomb, as opposed to exp-Golomb, binarization. *See* Ex. 6 ¶¶ 72, 78. That is because Golomb and exp-Golomb binarization *both* use a unary prefix with binary suffix bits. ’387 Patent at 5:54-55 (“Golomb and exp-Golomb codewords . . . use a unary prefix followed by a binary postfix.”); Ex. 6 ¶ 30. Because it does not disclose how to construct the unary prefix and the suffix bits, Figure 4 cannot provide sufficient structure for “means for constructing a codeword using a exp-Golomb binarization.”⁶

The decision of how many bits to use for the unary prefix and for the suffix bits is a crucial detail—indeed, the primary distinction between Golomb and exp-Golomb binarization lies in the fact that Golomb binarization uses fixed-length suffixes, while exp-Golomb binarization

⁶ The description of Figure 4 at 7:61-8:10 does not rectify this problem. For example, it discloses that, in creating the unary prefix, “the most significant bits of the value $v-(N-2)$ are extracted and converted to a unary representation.” *Id.* at 8:3-6. But it neither discloses how many bits of the value to extract, nor how to convert those bits into a unary representation. Ex. 6 ¶ 78. Similarly, though the description discloses that “the binary representation of the least significant bits of the value of $v-(N-2)$ are appended to the unary prefix,” it does not disclose how many of the least significant bits to use, nor how to obtain a “binary representation” of those bits. *Id.* ¶ 80.

1 uses suffixes that grow in length. *See id.* ¶ 31. Thus, Figure 4 does not provide sufficient
 2 structure for Claim 3.

3 Broadcom relies on *Serrano v. Tellular Corp.*, 111 F.3d 1578 (Fed. Cir. 1997), to argue
 4 that Claim 3 must be construed broadly enough to cover “the algorithms disclosed in Figure 4;
 5 Tables 1, 2, 3, and 4; column 6, line 26, through column 8, line 23; and original claims 1 and 3.”
 6 Opening Br. at 14. But in *Serrano*, the “alternative structures” each independently supported the
 7 means clause at issue, and the means clause at issue was broad enough to encompass multiple
 8 descriptions given in the specification. *Serrano*, 111 F.3d at 1582-83 (noting that “determination
 9 means” could encompass either “circuitry for performing digit analysis as structure for
 10 determining a last-dialed digit” or “use of a timer to determine when to determine when that digit
 11 is dialed”). Here, only the “detailed description” at 7:40-60 provides sufficient structure to
 12 support the means clauses in Claim 3; the remaining “algorithms” are either not algorithms at all,
 13 or they merely provide context for the overall invention.⁷

14 c. Broadcom’s Attack on Judge Selna’s Decision is Misguided.

15 The U.S. District Court for the Central District of California previously rejected
 16 Broadcom’s construction, and adopted the construction proposed by Netflix here. Ex. 4 at 12-18.
 17 Broadcom’s attacks on that decision are meritless. Broadcom claims that the court “did not cite or
 18 distinguish the Federal Circuit cases holding that constructions should not be limited to detailed
 19 iterations of a structure otherwise broadly described in the specification.” Opening Br. at 14 n.6
 20 (citing *Allvoice Computing PLC v. Nuance Commc’ns, Inc.*, 504 F.3d 1236, 1245 (Fed. Cir.
 21 2007); *Univ. of Pittsburgh of Commonwealth Sys. of Higher Educ. v. Varian Med. Sys., Inc.*, 561
 22 F. App’x 934, 941 (Fed. Cir. 2014); *Harris Corp. v. Ericsson Inc.*, 417 F.3d 1241, 1253-55 (Fed.
 23 Cir. 2005)). Like *Serrano*, these cases are inapposite.

24 *Allvoice* held that “algorithms in the specification need only disclose adequate defining
 25 structure to render the bounds of the claim understandable to one of ordinary skill in the art.”

26 ⁷ Broadcom also cites, as an example of an algorithm supporting Claim 3, the entire text of the
 27 patent from 6:26-8:23. Opening Br. at 14. Netflix agrees that this text contains sufficient support
 28 for Claim 3 in the “detailed description” at 7:40-60. But to the extent that Broadcom argues that
 other portions of this text provide alternative structures for Claim 3, Broadcom’s arguments are
 answered above.

1 *Allvoice*, 504 F.3d at 1245. But here, only the “detailed description” at 7:40-60 gives adequate
 2 structure to render the bounds of the claim understandable to one of ordinary skill in the art. Ex.
 3 6 ¶ 72. Figure 4 alone cannot do so.

4 In *Varian*, the Federal Circuit (in a nonprecedential opinion) rejected a patentee’s attempt
 5 to read that “[t]he algorithm need only include what is necessary to perform the claimed
 6 function.” *Varian*, 561 F. App’x at 941. But here, the “detailed description” at 7:40-60 is
 7 necessary to perform the claimed function, and Figure 4 with the general description lack the
 8 specificity to generate exp-Golomb suffixes

9 And finally, Broadcom’s discussion of *Harris* is confounding. In *Harris*, the Federal
 10 Circuit rejected the patentee’s claim that the structure for a “time domain processing means” was
 11 broad enough to encompass both a one-step algorithm and a two-step algorithm. *Harris*, 417
 12 F.3d at 1255. At issue was whether two distinct steps were required, as opposed to one, not
 13 whether each of the two component steps itself required a specific series of calculations. *Id.* at
 14 1253-55. The Federal Circuit found that because the specification “characterize[d] the two-step
 15 process as ‘the invention,’” the proper construction could not encompass one-step algorithms. *Id.*
 16 Here, the specification clearly lays out “*the* method” for constructing hybrid binarizations at
 17 column 7, lines 40-60, so, following *Harris*, that method should be taken as the structure.

18 Only the structure described at 7:46-8:10 supports the claimed function, and Netflix’s
 19 proposed constructions should be adopted.

20 C. ’663 Patent

21 The ’663 patent does not claim a binarization system in terms of unary and exp-Golomb
 22 binarization, but instead claims “patterns” and “portions,” neither of which are mentioned in the
 23 specification outside the claims. Claim 12 recites “[a] method for generating a codeword from an
 24 index value for digital video encoding, comprising the steps of: (A) generating a first pattern in a
 25 first portion of said codeword in response to said index value being at least as great as a
 26 threshold; (B) generating a second pattern in a second portion of said codeword following said
 27 first portion representing an offset of said index value above said threshold; and (C) generating a
 28 third pattern in a third portion of said codeword following said second portion representing a

value of said index value above said offset.” ’663 Patent 8:25-35. Claims 13, 18, and 19 depend from Claim 12.

1. Claim 12

Broadcom’s Proposal	Netflix’s Proposal
No further construction necessary regarding order of limitations	Steps recited within this claim must be performed in order

Like the mean-plus-function claim of the ‘387, Claim 12 of the ‘663 patent was construed in prior litigation. In *Asustek*, Judge Edward Chen squarely rejected the same argument that Broadcom makes here, that the steps of Claim 12 need not be performed in order. Ex. 7 at 21–22 (*Asustek*, 15-cv-04525, Dkt 203). As Judge Chen correctly held, the language in the steps build on each other, as steps (B) and (C) each involve “generating” a “pattern . . . *following*” an earlier step and, in particular, the third step generates a pattern “representing a value . . . *above said offset*” (which is generated in the second step). *Id.* at 21. Judge Chen looked beyond the claims, at the specification, and found more explicit ordering language between each step (*e.g.* “Processing *moves* to step 104. . . . Processing *then moves* to step 108.”). *Id.* at 21–22. Judge Chen correctly noted: “Nowhere in the specification is it suggested that order is not a part of the process.” *Id.* at 22; *see also* Ex. 6 ¶¶ 95–102 (explaining that “[e]very description of the binarization process recited in Claim 12 involves steps that are performed in order).

Broadcom then tried to convince Judge James V. Selna that the steps in parallel claims (11 and 21) do not have to be practiced in order, despite the very same ordering language, but Judge Selna expressly endorsed Judge Chen’s “persuasive” reasoning. Ex. 4 at 20 n.9. Broadcom tried a third time, in *Amazon*, but Judge Selna **again** rejected Broadcom’s arguments that the ordered steps in the ’663 patent do not “imply or require a certain temporal sequence.” Ex. 5 at 35–36. Judge Selna’s order was again based on both the claim language and the specification. *Id.* at 36.

In this case, Broadcom rehashes the same arguments, which are contrary to both the plain language of the claim and the specification. Even on a clean slate, Broadcom’s arguments should be rejected again. A method claim is construed to require order when the steps “actually recite an order,” or when “the claim implicitly requires order, for example, if the language of a claimed step refers to the completed results of the prior step.” *Kaneka Corp. v. Xiamen Kingdomway Grp.*

1 Co., 790 F.3d 1298, 1306 (Fed. Cir. 2015).

2 As previous courts have held, the later steps of Claim 12 refer to the completed results of
3 prior steps, so they must be performed in order. The second step requires “generating a second
4 pattern in a second portion of said codeword *following said first portion*,” meaning that the first
5 portion must already exist. The third step requires “generating a third pattern in a third portion of
6 said codeword *following said second portion*,” meaning that the second portion must already
7 exist. Additionally, the third step specifies that the third pattern “represent[s] a value of said
8 index value *above said offset*.” The “said offset” is established in the second step, so the third step
9 must be performed after the second step, as Judge Chen expressly held. Ex. 5 at 36 n.9. Where
10 the language of a claim “step refers to the completed results of the prior step,” a method claim is
11 construed to require that the steps be performed in order. *Kaneka*, 790 F.3d at 1306.

12 Moreover, claims “must be read in view of the specification, of which they are a part.”
13 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005). Every description in the
14 specification involves steps performed in order. Ex. 6 ¶ 95. For example, in Figure 4, the steps—
15 which a person of skill would recognize as the three patterns in Claim 12—are separated by
16 arrows that indicate an ordered sequence. *Id.* ¶ 96. In the written description of Figure 4 at
17 column 7, lines 4-13, the specification teaches that processing moves between the steps
18 temporally, using language like “Processing then moves to step. . . .” *Id.* ¶¶ 97-99. Finally, in the
19 “detailed description of the method for constructing” hybrid binarizations, the steps
20 corresponding to generation of the codeword above the threshold are numbered (“1,” “2,” and
21 “3”), and each step again references the part of the codeword created in the previous step. *Id.* ¶¶
22 100-102.

23 Broadcom’s rehashed arguments are unconvincing. Broadcom asserts that the three steps
24 of Claim 12 are independent and could be performed in any order. Acknowledging the fact that
25 the third step refers to the “value above set offset,” Broadcom claims that the third step could be
26 performed “independently” of the second step by giving a direct formula for the “offset”
27 $[\log_2(v - (N - 2))]$ and then arguing that the “value above the offset” can be independently
28 calculated with the formula $v - (N - 2) - 2^{\lceil \log_2(v - (N - 2)) \rceil}$. But this formula literally contains

Broadcom’s given formula for the offset in an exponent, which means the offset in step 2 must be calculated before the “value above set offset” in step 3 can be calculated.

2. Claims 13, 18, and 19 are all Indefinite.

A patent’s claims, “viewed in light of the specification and prosecution history,” must “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). Each of the dependent claims 13, 18, and 19 fails to establish the scope of its limitations with the requisite certainty. According to Broadcom, independent Claim 12 tells users how to generate three patterns in three portions of a codeword when an index value is “at least as great as a threshold.” Opening Br. at 7. Broadcom contends that when the index is *below* the threshold, a POSITA must look to dependent Claims 13, 18, and 19—respectively— to determine “what happens” in the first portion (Claim 13), second portion (Claim 18), and third portion (Claim 19). *Id.* But each fails to fully recite the process for generating the codeword without reference to the other, distinct dependent claims, a failure that as a matter of law renders the claims indefinite.

a. “a fourth pattern in said first portion based on said index value in response to said index value being below said threshold” (claim 13)

Broadcom’s Proposal	Netflix’s Proposal
Plain and ordinary meaning	Indefinite

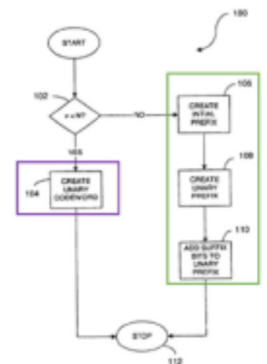
Claim 13 adds a fourth step to Claim 12, resulting in a method comprising four steps: (1) “generating a first pattern in a first portion . . . in response to said index value being [at least as great as a threshold];” (2) “generating a second pattern in a second portion . . . representing an offset of said index value above said threshold;” (3) “generating a third pattern in a third portion . . . representing a value of said index value above said offset;” and (4) “generating a fourth pattern in said first portion based on said index value in response to said index value being below said threshold.”

The parties agree that the first step, because it generates something “in response to” the “index value being at least as great as a threshold,” is not practiced *below* the threshold. But the first point of indefiniteness is whether steps 2 and 3 are practiced below the threshold. On one

hand, they omit the explicit conditional phrasing of step 1; on the other hand, they refer to an offset “above” the threshold, and a value “above” an offset, so a POSITA might assume that steps 2 and 3 are performed only above the threshold. Ex. 6 ¶ 110.

In the first scenario, where steps 2 and 3 *are* practiced below the threshold, then a POSITA would be unable to determine how to represent “an offset of said index value above said threshold” when the index value is below the threshold. *See id.* ¶ 111. And given the resulting indefiniteness of “offset,” it would be impossible to determine in step 3 what it meant to represent “a value of said index value above said offset.” *Id.* Presumably this is why Broadcom does not contend that steps 2 and 3 are practiced below the threshold.

But in that second scenario, Claim 13 has only one step (the generation of a fourth pattern in a first portion), and **none of the steps of independent claim 12 are practiced** when Claim 13 is practiced. Broadcom’s interpretation creates insoluble inconsistencies in the claim. Broadcom explains that Figure 4 provides “an exemplary embodiment of claims 12 and 13” and that Figure 6 “illustrate[s]” how the portions work. But according to Figure 4, there is only one step (“CREATE UNARY CODEWORD”) when the index is below the threshold. According to Broadcom, that reflects the fourth pattern in the first portion in Claim 13. Opening Br. at 7. So, according to Broadcom, a POSITA practicing Claim 13 generates the first portion of the code word. But Claim 12 specifies a codeword with *three* portions, and even if it didn’t, a POSITA would understand that a method is incomplete if it generates only one “portion” of a codeword. *See* Ex. 6 ¶ 112. Claim 13 does not recite any instructions for generating the other two portions of the three-portion codeword, and therefore Claim 13 does not provide “reasonable certainty” about how to finish “generating a codeword.”⁸



⁸ The combination of Claims 12 and 13 cannot terminate after generating a portion of a codeword because the preamble of Claim 12, which the parties agree is limiting, mandates that the method generates “a codeword.”

Broadcom's solution is to read Claims 13, 18, and 19 as a combined description of "what happens" in the first, second, and third portions of the codeword below the threshold.⁹ As illustrated by a diagram created by their expert, Claim 13, 18, and 19 respectively describe "what happens" in the first, second, and third portions. Richardson Decl. at 55. Claim 13 does not include the limitations of Claims 18 and 19, so Claim 13 is still indefinite. To read the limitations of Claims 18 and 19 into Claim 13 would defeat the purpose of having separate dependent Claims

Index (v)	Claim 13	Claims 18 and 19		Codeword
	First Portion	Second Portion	Third Portion	
0	0			0
1	10			10
2	110			110
3	1110			1110
4	11110			11110
5	111110			111110
6	1111110			1111110
7	11111110			11111110
8	111111110			111111110
9	1111111110			1111111110
10	11111111110			11111111110
11	111111111110			111111111110
12	1111111111110			1111111111110
13	11111111111110			11111111111110
14	111111111111110			111111111111110
15	1111111111111110			1111111111111110
16	1111111111111111	0	0	111111111111111100
17	1111111111111111	0	1	111111111111111101
18	1111111111111111	10	00	1111111111111111100
Claim 12				

18 and 19. *See SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1122 (Fed. Cir. 1985) ("It is settled law that when a patent claim does not contain a certain limitation and another claim does, that limitation cannot be read into the former claim. . ."). And even if Claims 18 and 19 (combined, which is not how they were patented) could be interpreted as one *possible* way to finish the codeword, they

are not the only way. The specification acknowledges many binarization methods,'663 patent at 4:47-48, leaving a POSITA without any clear indication as to which to use (or how to use it).

b. "wherein said [second/third] portion is void in response to said index value being below said threshold" (claims 18 and 19)

Broadcom's Proposal	Netflix's Proposal
Plain and ordinary meaning	Indefinite

Claims 18 and 19 contradict steps 2 and 3 of independent Claim 12 by mandating, respectively, that "[the second/third] portion is void in response to said index value being below the threshold." '663 patent at 8:53-58. These claims are indefinite for two independent reasons.

First, they fail to provide reasonable limitations on the possible structure of the codeword.

⁹ Opening Br. at 7 ("Other claims address what happens to the first, second, and third portions of [the] codeword [below the threshold]"); 8 ("Claims 18 and 19 . . . address how to generate second and third portions of the codeword").

Below the threshold, Claim 18 specifies that the second portion is void (without any instructions about how to make the portion void). If there is a second portion, there must be a first portion, but Claim 18 says nothing about “what happens” to the first portion (or the third portion, for that matter). Ex. 6 ¶119. A POSITA reading Claims 12 and 18 would have no idea “what happens” in the first or third portions, and would know only that the second portion must be void. *Id.* To finish the codeword, Broadcom reads in both Claim 13 and 19, but Claim 18 is dependent on Claim 12, not 13. The patentee drafted Claims 13, 18, and 19 so that each is separately dependent on Claim 12, which means that Claims 13 and 19 are not necessarily practiced when Claim 18 is. A POSITA *might* look to Claims 13 and 19 for a clue as to how to finish the codeword, but because of the doctrine of claim differentiation, the POSITA would know that there must be some other—unspecified—way to finish the codeword. In the exact same way, Claim 19 mandates that the third portion is void below the threshold, but it specifies nothing about the first or second portion in that scenario. *Id.* ¶ 126.

Thus, Claim 18 provides some guidance for “what happens” only in the second portion, Claim 19 addresses only the third portion, but neither claim says anything about what happens to the other two portions. Broadcom re-imagines Claims 13, 18, and 19 as though they are three steps in a single claim. But that’s not how the claims were drafted. The method of independent Claim 12 is a method for generating a codeword, not a method for generating portions of a codeword. Each of these atomized dependent claims fails to give a POSITA any “reasonable certainty” about how to finish the other portions of a codeword. Thus, Claims 18 and 19 are indefinite.

Second, either Claims 18 and 19 are irreconcilable with Claim 12, or they are indefinite. As discussed above, Claim 12 does not clearly state whether steps 2 and 3 are performed when the index is below the threshold. (An “offset . . . above” a threshold suggests an index above a threshold, but anyone familiar with exp-Golomb binarization can comprehend an offset that’s negative.) If step 2 *is* performed, then “generating a second pattern in a second portion” is irreconcilable with specifying that “said second portion is void.” The exact same conflict exists between step 3 of claim 12 (“generating a third pattern in a third portion”) and claim 19 (“said

third portion is void”). Ex. 6 ¶¶ 121, 128. Though the specification nowhere defines a “void” portion, no reasonable definition would allow a portion to have a pattern in it and also be void. “A dependent claim that contradicts, rather than narrows, the claim from which it depends is invalid.” *Multilayer Stretch Cling Film Holdings v. Berry Plastics*, 831 F.3d 1350, 1362 (Fed. Cir. 2016). On this read of steps 2 and 3, Claims 18 and 19 would be invalid.

Alternatively, if steps 2 and 3 are not performed below the threshold, then Claims 18 and 19 have no antecedent basis for the “*said* second portion” and “*said* third portion,” respectively. Ex. 6 ¶¶ 122, 129. And if Broadcom argues that the second and third portions exist, even when steps 2 and 3 do not generate patterns in them, then Claim 18 is indefinite because it does not specify anything about the third portion below the threshold, and Claim 19 is indefinite because it does not specify anything about the second portion when the index is below the threshold. *See id.*

D. ’283 Patent

1. “wherein the second syntax element specifies the PU partition mode for the selected CU, wherein the PU partition mode is based on a size NxN 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 NxN PU when the selected CU is another CU than the SCU of the plurality of CUs”

Broadcom’s Proposal	Netflix’s Proposal
Plain and ordinary meaning	Indefinite

This claim term is indefinite. “A patent must be precise enough to afford clear notice of what is *claimed*, thereby appris[ing] the public of what is still open to them.” *Nautilus*, 572 U.S. at 910 (citations omitted, emphasis added). The disputed claim term of the ’283 patent fails to provide such notice.

The scope of the claimed “PU partition mode” is unclear. In claiming the specified “PU partition mode,” the patentee twice recites the vague and unbounded phrase “is based on” to define the mode—“the PU partition mode *is based on* a size NxN 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 NxN PU when the selected CU is another CU than the SCU of the plurality of CUs.” The inclusion of the words “is based on” renders the claim limitation unintelligible, making it impossible for a person of skill in the art to discern with reasonable certainty what falls inside and outside the

1 scope of the claims. *See* Ex. 9 ¶¶ 19-26 (“Size Decl.”).

2 The written description of the ’283 patent does not disclose a single example of a PU
3 partition mode that “is based on a size NxN PU.” *Id.* ¶ 25. The phrase “is based on” appears
4 nowhere in the written description. Broadcom points to Figure 12 of the patent, which purports to
5 depict four PU partition modes: 2Nx2N, Nx2N, 2NxN, and NxN. These are the only PU partition
6 modes disclosed in the specification. Broadcom suggests that the first three PU partition modes
7 are **not** based on a size NxN. Opening Br. at 15-17; *see also* Ex. 9 ¶¶ 21-22. But the only
8 remaining PU partition mode, as labeled by the ’283 patent, **is** NxN—not near NxN, not
9 approximately NxN, and not “based on” NxN, **but NxN exactly**. In short, the four disclosed
10 examples of PU partition modes in the ’283 patent offer no indication of what the phrase “based
11 on” means or brings to the claims.

12 A similarly vague claim phrase was found indefinite in *Synthes (USA) v. Smith & Nephew,*
13 *Inc.*, 547 F. Supp. 2d 436 (E.D. Pa. 2008). There, the claims at issue required that studs for bone
14 contact must be “less than about 2%” of the lower surface of a bone plate. *Id.* at 454. The court
15 held that the term “less than about 2%” was indefinite. The patent failed to provide notice to a
16 potential infringer regarding the meaning of “about 2%” in the context of the claims. “The
17 written description [and] specification,” the court noted, “omit the vague word ‘about’ and simply
18 recite a ratio of ‘less than 2%.’” *Id.* Moreover, the plaintiff “offered no explanation or testimony
19 by experts or the patentees as to why the words ‘about 2%’ would be used” in the claim. *Id.* The
20 disputed ’283 term here suffers from the same deficiencies.

21 Broadcom contends that the disputed claim phrase should be understood according to its
22 “plain and ordinary meaning.” *See* Opening Br. at 12-13; *see also* Richardson Decl. at 18:15-20
23 (“In sum, it is my opinion that a person of ordinary skill in the art would understand the [disputed
24 ’283 term] to have its plain and ordinary meaning.”). But instead of explaining the plain meaning
25 of the words “based on” as used in the claim language, Broadcom writes a different claim that
26 excises them entirely.

27 The Federal Circuit “repeatedly and consistently has recognized that courts may not
28 redraft claims, whether to make them operable or to sustain their validity.” *Chef Am., Inc. v.*

Lamb-Weston, Inc., 358 F.3d 1371, 1374 (Fed. Cir. 2004). “It is not our function to rewrite claims to preserve their validity. We are simply tasked with determining whether the claims ‘particularly point[] out and distinctly claim[]’ what the inventor regards as his invention.” *Allen Engr. Corp. v. Bartell Industries, Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002). Yet Broadcom urges the Court to ignore language in the claims of the ’283 patent.

Broadcom and its expert offer varied interpretations of what “based on size $N \times N$ PU” and “based on a different size $N \times N$ PU” mean. Broadcom’s expert opines that “a person of ordinary skill in the art would generally understand ‘based on size $N \times N$ PU’ in this context to mean that $N \times N$ is the smallest (most ‘basic’) subdivision in this case and ‘based on different size PU’ to mean that a different (e.g. larger) PU size is the smallest subdivision.” Richardson Decl. at 18. Meanwhile, Broadcom contends in its brief that “[a] person of ordinary skill in the art would understand that this means a codebook that can set $N \times N$ partition modes is used for a smallest coding unit, and a codebook that cannot set $N \times N$ partition modes is used for a larger coding unit.” Opening Br. at 17. The two interpretations are different, but they have at least one thing in common: both remove the phrase “is based on” from the claim.

“[The plaintiff] argues that it and [and its expert] do not suggest redrafting the claims, but rather that a person of ordinary skill in the art ‘would have perceived the claims as drafted’ to mean something different than what was written. But that is a distinction without a difference.” *See Synchronoss Techs., Inc. v. Dropbox Inc.*, 389 F. Supp. 3d 703, 715 (N.D. Cal. 2019), *aff’d*, 987 F.3d 1358 (Fed. Cir. 2021). In sum, the disputed ’283 term fails to “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus*, 572 U.S. at 910. The claims in which the term appears are therefore indefinite.

E. ’138 Patent

1. “virtual machine manager”

Broadcom’s Proposal	Netflix’s Proposal
Plain and ordinary meaning	“software program that manages one or more virtual machines”

A “virtual machine manager” is “a software program that manages one or more virtual machines.” The specification supports this proposed construction, explaining “[a]s used herein, a

virtual machine manager is a software program that is capable of managing one or more virtual machines.” ’138 Patent at 32:59-63 (emphasis added); see also 33:21-23; 33:39-41; Fig. 24. That is, the patentee explicitly acted as their own lexicographer in defining the claim phrase.

Broadcom admits this in its opening brief. *See* Opening Br. at 19 (conceding “[t]he patentee . . . expressly defin[ed] ‘virtual machine manager’”). And Broadcom has already stipulated to a construction based on another, related definition provided in the ’138 Patent for “virtual machine.” The same course is appropriate here.¹⁰ Broadcom’s opening brief claims “virtual machine manager” requires no construction “because its meaning is readily understandable to a lay jury.” Opening Br. at 19. To the contrary, “virtual machine manager” is a technical phrase evoking no plain meaning for a lay juror. Broadcom’s position should therefore be rejected.

2. “rules engine”

Broadcom’s Proposal	Netflix’s Proposal
Plain and ordinary meaning	“software that performs logical reasoning using ‘if/then’ rules”

“Rules engine” should be construed as “software that performs logical reasoning using ‘if/then’ rules.” This construction aligns with the specification’s direction that rules engines “may be viewed as software that performs logical reasoning using knowledge encoded in high-level condition-action rules” that apply “automated reasoning,” such as “modus ponens inference rules,” to move “forward from preconditions to goals.” ’138 Patent at 22:54-62. Put simply, modus ponens is an if/then logic rule.¹¹ Netflix’s proposed definition matches the intrinsic evidence and makes a technical term understandable to a jury.

Broadcom incorrectly argues that Netflix’s proposed construction would import a limitation from the specification. *See* Opening Br. at 20 (citing *Innova/Pure Water, Inc. v. Safari*

¹⁰ The modification that Netflix has proposed—to substitute “managed” for “is capable of managing”—is meant only to simplify the construction and avoid any ambiguity that might arise for a jury about the “capability” of software. With or without such simplification, the definition from the specification is the appropriate construction.

¹¹ *See, e.g.,* Modus Ponens, OXFORD ENGLISH DICTIONARY ONLINE, <https://www-oedcom.stanford.idm.oclc.org/view/Entry/238362?redirectedFrom=modus+ponens#eid> (last visited July 12, 2021). The specification also refers to some embodiments of the rules engine as “forward chaining,” which describes a method of reasoning used by inference engines that repeatedly applies modus ponens. ’138 Patent at 22:20-24.

1 *Water Filtration Sys., Inc.*, 381 F.3d 1111, 1117 (Fed. Cir. 2004), and *Netword, LLC v. Centraal*
 2 *Corp.*, 242 F.3d 1347, 1358 (Fed. Cir. 2001)).¹² The Federal Circuit counsels against assigning
 3 “such a limited role to the specification, and in particular requiring that any definition of the claim
 4 language in the specification be express,” finding “the specification is ‘the single best guide to the
 5 meaning of a disputed term,’ and that the specification ‘acts as a dictionary when it expressly
 6 defines terms used in the claims or when it defines terms by implication.’” *Phillips*, 415 F.3d at
 7 1320-21 (quoting *Vitronics Corp. v. Conceptronic*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Here,
 8 the construction Netflix offers is based on the specification’s explanation of the term “rules
 9 engine” and neither limits nor broadens the claim language.

10 In contrast, Broadcom proposes the Court adopt the “plain meaning” of rules engine.
 11 Given that the parties dispute the scope of the term, “plain and ordinary meaning” is insufficient
 12 under binding precedent. *See Eon Corp. IP Holdings v. Silver Spring Networks, Inc.*, 815 F.3d
 13 1314, 1319 (Fed. Cir. 2016). Moreover, the claim phrase is not readily apparent to lay people and
 14 not helpful to a jury. Indeed, both Netflix and Broadcom cite to the Microsoft Computer
 15 Dictionary definition of “rules engine,” demonstrating that “rules engine” is a term of art
 16 requiring construction. *See* Ex. 10 (Computer Dictionary, Microsoft Press, 5th Ed. (2002); Dkt
 17 112 at 13-14.

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25 ¹² Tellingly, Broadcom relies on the dissent in *Netword* to argue that permissive language should
 26 not be used to limit a claim term (though Broadcom misleadingly suggests it is the holding of the
 27 case). In fact, the Federal Circuit in *Netword* held that the specification was properly used to
 28 define Plaintiff’s invention, saying “[t]he role of the specification includes presenting a
 description of the technologic subject matter of the invention The claims are directed to the
 invention that is described in the specification; they do not have meaning removed from the
 context from which they arose.” 242 F.3d at 1352-53.

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