**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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| REALTIME ADAPTIVE STREAMING LLC, | |
| Plaintiff, | Case No. 1:17-cv-02097-RBJ |
| v. | |
| SLING TV L.L.C.,<br>SLING MEDIA L.L.C.,<br>DISH TECHNOLOGIES L.L.C.,<br>DISH NETWORK L.L.C., AND<br>ARRIS SOLUTIONS, INC., | |
| Defendants. | |

**PLAINTIFF REALTIME ADAPTIVE STREAMING LLC'S
RESPONSIVE CLAIM CONSTRUCTION BRIEF**

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## I.   INTRODUCTION

Realtime and Defendants offer not just competing proposals, but different approaches to claim construction. The Federal Circuit has set forth straightforward rules to guide claim construction. For example, where claim terms have a plain and ordinary meaning in the field, that meaning almost always controls. Further, where claim term does not recite "means" language, the term is presumptively not means-plus-function. Realtime's proposals follow Federal Circuit precedent.

Defendants' proposals, on the other hand, reflect an erroneous approach to claim construction. Defendants ask this Court to recharacterize and burden clear terms with artificial and extraneous baggage, but cannot point to any requisite clear and unmistakable disclaimer. This invites reversible error. Worse, their proposals are inconsistent with—and even *exclude*—embodiments taught in the patent specification. In so doing, Defendants even flatly contradict legal and factual positions they have recently taken before the PTAB on the same term. Unable to justify their extraneous limitations, Defendants also resort to flawed means-plus-function arguments. Defendants attempt to import limitations by casting structure-connoting term as means-plus-function. But none of claims recite "means" or use nonce words. The Court should reject Defendant's proposed constructions and adopt Realtime's proposals.

## II.   BACKGROUND OF THE PATENTS-IN-SUIT

The asserted patents[1] teach improved, particularized digital data compression systems and methods to address problems specific to digital data. For instance, the patents state that they deal with limitations and problems arising in the realm of compressing "[d]iffuse digital data" which is "a representation of data that … is typically

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[1] The two asserted patents—the '535 and '610 patents—are related and have substantially the same specification. Thus, the citations to the '535 patent are applicable to the '610 patent, and vice versa.

not easily recognizable to humans in its native form." '535 patent at 2:28-30.[2]

The asserted patents are directed to systems and methods of digital data compression utilizing multiple data compression encoders (e.g., asymmetric compressors) to compress data based on a parameter relating to, e.g., throughput (bandwidth) of a communication channel. '535 patent at Abstract, 1:21-29. The patents address specific problems in the field of compressing, storing, and transmitting digital data, including: the "compromise between efficient data storage, access speed, and addressable data space"; "file systems [that] are not able to randomly access compressed data in an efficient manner"; "substantial disk fragmentation and slower access times"; issues regarding "knowledge of … algorithmic efficiency"; and "[c]ompeting requirements of data access bandwidth, data reliability/redundancy, and efficiency of storage space." *Id.* at 5:5-10; 6:31-7:45.

The patents solved these technological problems and others with a novel technological solution in digital data compression utilizing combination of (1) asymmetric compressors, (2) two or more compressors, (3) selecting compressor based on parameter such as throughput of a communication channel, and/or (4) access profile. The patents explain that "access profiles comprise information that enables the controller to select a suitable compression algorithm that provides a desired balance between execution speed (rate of compression) and efficiency (compression ratio)" (*id.* at 8:8-13), and state that an access profile may comprise data type information alone (*id.* at 11:35-38). The patents describe that "the overall throughput (bandwidth) … is one factor considered by the controller 11 in deciding whether to use an asymmetrical or symmetrical compression" (*id.* at 11:25-29), and consistently uses the term "throughput" to be data rate or usage of a system. *E.g., id.* at 7:51-55. The patents also recognized

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[2] All emphasis in quotes are added unless otherwise stated.

that "utiliz[ing] an asymmetrical algorithm … [may] provide an increase in the overall system performance" (*id.* at 12:14-20), whereby an "asymmetric" is precisely described to be compression algorithm "in which the execution time for the compression and decompression routines differ significantly." *Id.* at 9:63-66.

## III.   CLAIM CONSTRUCTION PRINCIPLES

Claim construction is a matter of law for the Court. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384-91 (1996). The Federal Circuit "indulge[s] a **heavy presumption** that **claim** terms carry their full **ordinary** and customary **meaning[.]"** *Omega Eng,g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003). "There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution." *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1367–68 (Fed. Cir. 2012).

"[T]he claim construction inquiry … begins and ends in all cases with the actual words of the claim. *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998). Although claims are read in light of the specification, descriptions from the specifications may not be imported into the claims. *Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1186–87 (Fed. Cir. 1998). A court also may look to other, extrinsic sources to show "what a person of skill in the art would have understood disputed claim language to mean." *Innova/Pure Water, Inc. v. Safari Water Filtration Sys. Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004); *see also Teva Pharms. USA v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015) (courts can consult extrinsic evidence and find facts necessary "to understand, for example, the background science or the meaning of a term in the relevant arty during the relevant time period."). These sources include evidence such as expert testimony or dictionaries "concerning relevant scientific

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