

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge R. Brooke Jackson

Civil Action No 17-cv-02097-RBJ

REALTIME ADAPTIVE STREAMING LLC,

Plaintiff,

v.

SLING TV L.L.C.,  
SLING MEDIA, L.L.C.,  
ECHOSTAR TECHNOLOGIES L.L.C.,  
DISH NETWORK L.L.C., and  
ARRIS GROUP, INC.,

Defendant.

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**MARKMAN ORDER**

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This patent infringement lawsuit involves data compression. *See generally* Second Amended Complaint, ECF No. 32. At the parties' request, the Court conducted a "Markman" hearing on December 19, 2018. The Court's interpretation of the key terms is set forth in this order.

**BACKGROUND**

There are two asserted patents in this case: U.S. Patent Nos. 8,867,610 ("the '610 patent") and 8,934,535 ("the '535 patent") (collectively, "Asserted Patents"). Plaintiff Realtime is the owner of both patents. The '610 patent is titled "System and Methods for Video and Audio Data Distribution," whereas the '535 patent is titled "stem and Methods for Video and Audio Data Storage and Distribution." The specifications for both patents are virtually identical.

The Asserted Patents concern data compression and decompression algorithms. The patents are directed to selecting a compression scheme based on characteristics of the digital data being compressed. The Asserted Patents attempt to optimize compression time for digital files to prevent problems such as download delay, data buffering, and reduced system speeds. As depicted in Figure 1, the controller selects a compression algorithm from a database of algorithms based on the data type and throughput requirements.

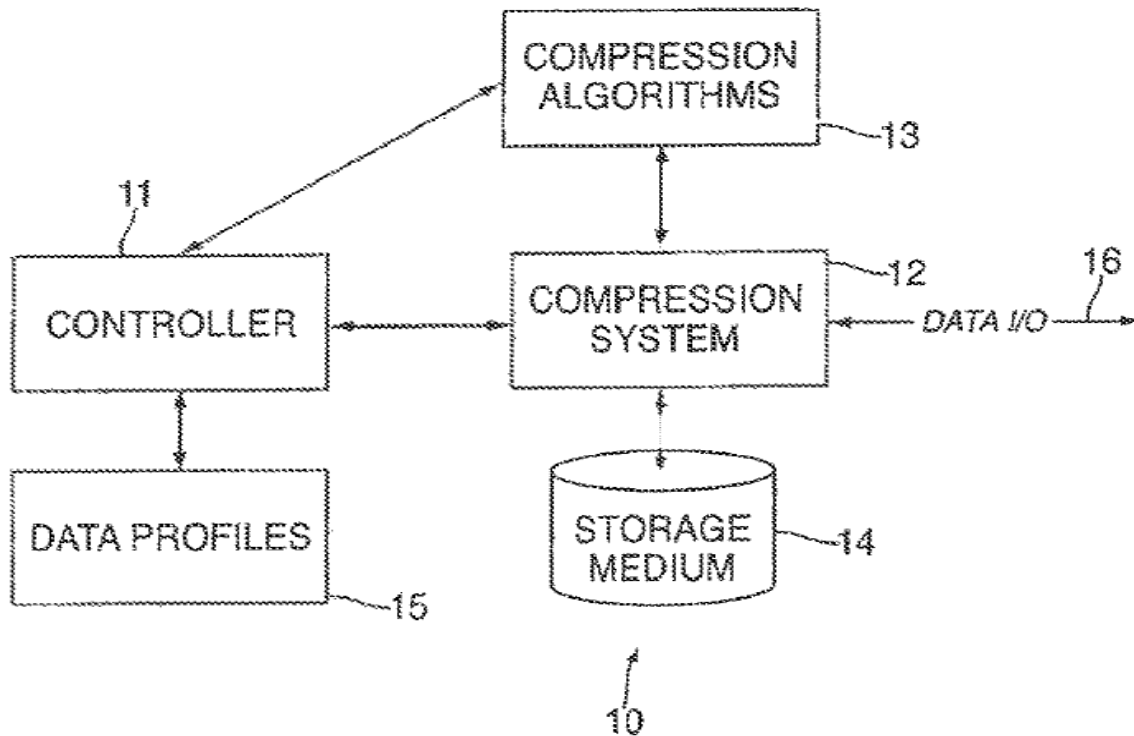


FIG. 1

To select the optimal compression algorithm, the Asserted Patents first assign a data or access profile to the user based on the frequency that the data is accessed or written. Then, the Asserted Patents assign a compression algorithm to each profile. A symmetrical compression

algorithm would be optimal when the profile has a similar read to write ratio (meaning the number of reads and writes is balanced). In contrast, an asymmetrical compression algorithm is preferred when the profile writes often but reads seldom, or vice versa. In the former scenario, the preferred algorithm would compress quickly and decompress slowly. The opposite is true for the latter scenario.

Plaintiff asserts that defendants have infringed and continue to infringe on the Asserted Patents. The dispute has been set for a five-day jury trial commencing on December 16, 2019. However, the sole focus for this order is claim construction. The parties have narrowed their claim construction disputes to eight terms or groups of related terms. They have expressed their respective positions in a joint claim construction chart [ECF No. 121], claim construction briefs [ECF Nos. 127, 134, and 135], and in their presentations at the Markman hearing [ECF Nos. 144, 146]. On December 19, 2018 this Court conducted the hearing. At the parties' request, each side asked for 1.75 hours per side to make their arguments. In that time, we covered four of the eight terms: access profile, throughput of a communication channel, asymmetric compressor, and compressor. The parties agreed to rest on their written presentations for the remaining terms.

### LEGAL PRINCIPLES

Claim construction is a matter of law for the Court. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384–91 (1996). The objective is to give disputed terms in a patent claim the meaning that a person of ordinary skill in the relevant art would have given them at the time of the invention unless the patent applicant has clearly and unambiguously defined the terms differently. *See, e.g., Honeywell Int'l Inc. v. Universal Avionics Sys. Corp.*, 493 F.3d 1358, 1361 (Fed. Cir. 2007).

The Court principally considers “intrinsic evidence,” i.e., the words of the claim itself in the context of the entire patent including as relevant the specification and the prosecution history. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313–17 (Fed. Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006). The specification is “the single best guide to the meaning of a disputed term.” *Vitrionics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The court may not, however, read limitations from the specification, particularly the disclosed embodiments, into the claim. *Phillips*, 415 F. 3d at 1323–24. The district court may consult extrinsic evidence if it is necessary “to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period.” *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015).

## DISPUTED CLAIM TERMS

### I. ACCESS PROFILE [Claims ‘535 pat., Cl. 1 and 14].

#### A. Plaintiff’s Proposed Interpretation.

No construction is required beyond the plain and ordinary meaning of the term as determined by one of ordinary skill in the art based upon the claim being considered in context.

#### B. Defendants’ Interpretation.

The term “access profile” is a “profile containing information about the number or frequency of reads and writes.”<sup>1</sup>

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<sup>1</sup> Originally the DISH and Sling defendants did not seek construction for this term; only defendant Arris did. ECF No. 127 at 2. But in the reply brief and at the Markman hearing, the remaining defendants agreed with Arris’s proposed construction. As such, I refer to the proposed construction as “defendants’ interpretation.”

**C. Discussion.**

Claim 1 of the '535 patent claims

A method, comprising:

determining a parameter or attribute of at least a portion of a data block having audio or video data;

selecting an *access profile* from among a plurality of access profiles based upon the determined parameter or attribute; and

compressing at least the portion of the data block with one or more compressors using asymmetric data compression and information from the selected access profile to create one or more compressed data blocks, the information being indicative of the one or more compressors to apply to the at least the portion of the data block.

'535 pat. at col. 20:29–41 (emphasis added).

Defendants argue that the '535 patent consistently describes different “access profiles” for data based on information about the frequency a user reads (meaning opening a document) and writes (meaning saving a document) the data. ECF No. 127 at 2. To illustrate, defendants cite the chart at the bottom of column 12 of the '535 patent.

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