**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

MULTIMEDIA CONTENT MANAGEMENT LLC, Plaintiff	§ § § §	Civil Action No.: 6:18-cv-00207-ADA
	§	JURY TRIAL DEMANDED
v.	§ §	PATENT CASE
DISH NETWORK L.L.C., Defendant.	§ § § §	

<u>PLAINTIFF'S RESPONSIVE CLAIM CONSTRUCTION BRIEF</u>

In accordance with the Court's Initial Scheduling Order, Plaintiff Multimedia Content

Management LLC ("Plaintiff" or "MCM") submits the following brief in response to Defendant

Dish Network L.L.C.'s ("Defendant" or "Dish) opening claim construction brief, D.I. 48.

Contents

Exhibit List

Exhibit No.	Description
2001	Declaration of Mr. Joel R. Williams
2002	File History of U.S. Patent Application No. 13/369,174
2003	Decision Denying Institution of *Inter Partes* Review, IPR2017-01934, Paper No. 10
2004	U.S. Patent No. 8,799,468
2005	U.S. Patent No. 9,465,925

I.   INTRODUCTION

Plaintiff Multimedia Content Management LLC ("Plaintiff" or "MCM") submits the following brief in response to Dish's claim constructions brief submitted to the Court on March 15, 2019, D.I. 48. As detailed below, Dish's proposed constructions are not supported by, and are inconsistent with, the specifications and file histories of the patents-in-suit.

In accordance with the Court's Scheduling Order, D.I. 33 (Jan. 4, 2019), and the parties' Joint Stipulation Regarding Proposed Amended Scheduling Order, D.I. 42 (March 12, 2019), the parties have not scheduled any exchange of extrinsic evidence regarding claim construction and no discovery has taken place. MCM does not believe any extrinsic evidence is necessary for the Court to properly construe the disputed terms, and therefore MCM has not cited to any extrinsic evidence in support of its proposed constructions. MCM objects to Dish's Expert Declaration, submitted as Exhibit E to Dish's Claim Construction Brief, as wholly irrelevant to any issue of claim construction and MCM submits that such Declaration should be disregarded in its entirety.

II.   DISPUTED TERMS OF THE INDEPENDENT CLAIMS

A. Disputed Term No. 1 – "to generate controller instructions"

Plaintiff's Construction	Defendant's Construction
"generate computer processor-executable instructions, excluding merely a uniform resource locator (URL) or an internet protocol (IP) address"	"to create[ing] or bring[ing] into being computer executable instructions that determine whether to transmit or not transmit a content request from a user to the service provider network"
Plaintiff's Amended Construction	
"generate computer processor-executable instructions, excluding merely a uniform resource locator (URL) or an internet protocol (IP) address, excluding operations in which the controller instructions are only transmitted or are relayed by a device"	

Dish's primary concern with MCM's proposed construction appears to be "when controller instructions are 'transmitted' or 'relayed,' the instructions do not fall within the scope of the claimed 'generating' term." Dish's Opening Claim Construction Brief ("Dish Brief"), Dkt. 48 at 3. MCM agrees with this statement. *See* Ex. A to Dish Brief (Patent Owner's Preliminary Response in IPR2017-01934) at 12–13; Dish Brief at 4–5. In an effort to simplify claim construction issues, MCM therefore proposes to amend its proposed construction to make explicit that generating controller instructions does not include merely transmitting or relaying instructions. Dish rejected MCM's offer to jointly approve this amended construction.

Dish proposes to interpret "generate" as "create" or "bring into being." Dish Brief at 3–5. Dish offers no explanation as to why these additional words are more helpful, less ambiguous, or more consistent with the specification of the '468 Patent than the word "generate." *Id.* Dish instead relies on a general-purpose dictionary. *Id.* While noting that this extrinsic evidence is unnecessary, MCM has addressed, with the amended construction, Dish's concern that "generate" may somehow include "a construction encompassing 'transmitted' or 'relayed' instructions." *Id.* at 5.

The parties agree that "controller instructions" are computer-processor executable. *Id.* at 3; MCM's Opening Claim Construction Brief ("MCM Brief") at 8. Beyond that, Dish attempts to limit "controller instructions" to those controller instructions that are only concerned with "instructions that determine whether to transmit or not transmit a content request from a user to the service provider network." Dish Brief at 3, 5–6. This construction improperly narrows "controller instructions" to a specific embodiment of the '468 Patent and is inconsistent with the specification of the '468 Patent.

First, Dish argues that determining whether to transmit or not transmit a content request "is more appropriately included in the construction of 'controller instructions' because that

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