

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

MV3 PARTNERS LLC,
Plaintiff

-v-

ROKU, INC.,
Defendant

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6:18-CV-00308-ADA

CLAIM CONSTRUCTION ORDER

Before the Court are the parties’ claim construction briefs: Plaintiff MV3 Partners’ (“MV3”) opening, responsive, and reply briefs (ECF No. 64, 73, and 77, respectively) and Defendant Roku’s opening, responsive, and reply briefs (ECF No. 68, 72, and 76, respectively). The Court held the *Markman* hearing on July 19, 2019. ECF Nos. 82–83. During that hearing, the Court informed the Parties of the constructions it intended to provide. This Order does not alter any of those constructions.

I. Background

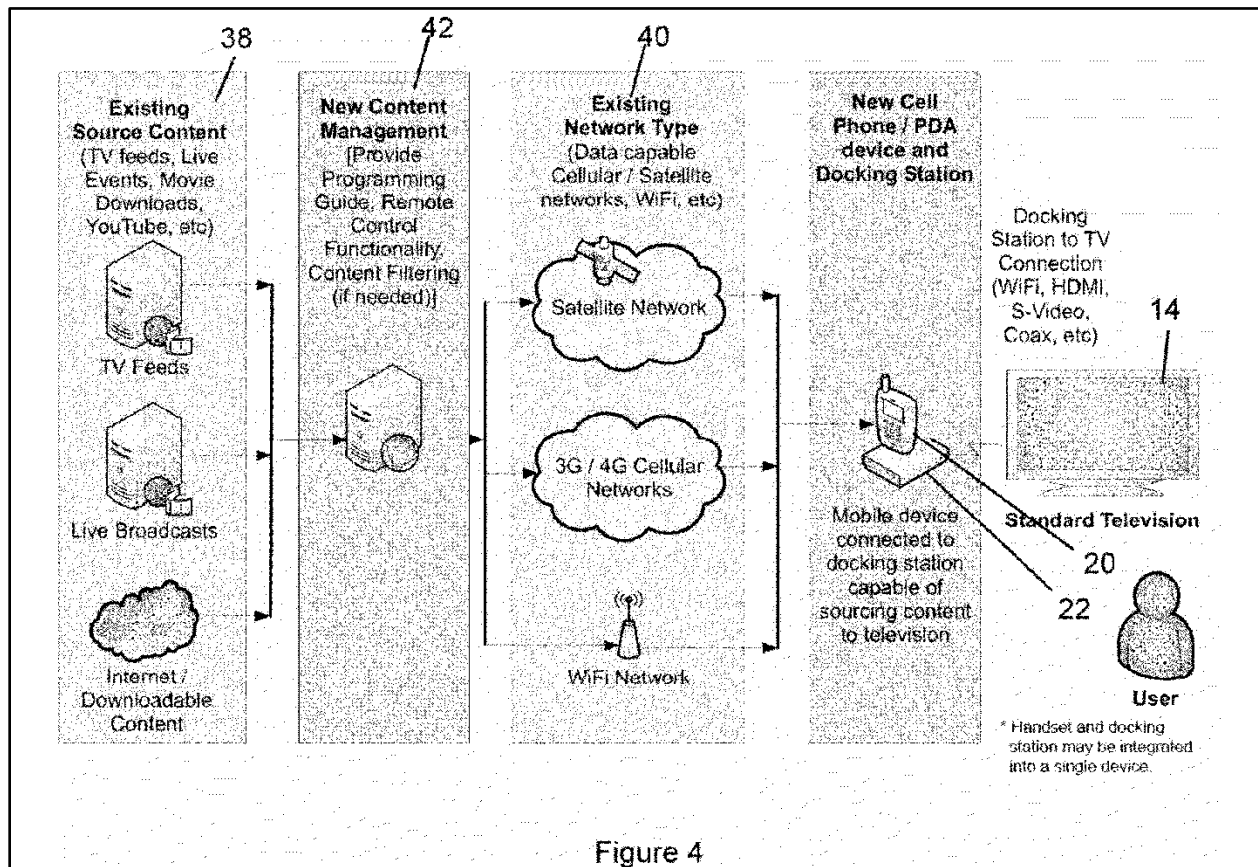
MV3 filed this lawsuit on October 16, 2018 alleging that Roku infringed U.S. Patent No. 8,863,223. ECF No. 1. Roku answered on January 22, 2019. ECF No. 39. MV3 asserts claims 1–3, 5, 6, 15, 21, 23, 25, 29–35, 37, 38, 47, 53, 55–57, 59, and 61.

The ’223 Patent is entitled “Mobile set top box.” According the specification of the ’223 Patent, the invention described therein solved at least the two of the problems that were present in the prior art. First, prior art set top boxes could “only be used with the network that provides the box,” *e.g.*, Comcast or Verizon FIOS. ’223 Patent at 1:32–35. Second, prior art mobile computing devices could not “up-convert” the content intended for a mobile computing device,

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which may have a three inch screen, so that the content properly fits on a large screen high-definition television. *Id.* at 2:38-61.

The '223 Patent describes a mobile set top box that “acts as a conduit between disparate data networks and display devices.” *Id.* at 2:65-67. Figure 4 illustrates the implementation of a disclosed embodiment. *Id.* at 3:59-61.



Label 38 in Figure 4 refers to different types of existing source content, *e.g.*, TV feeds, live broadcasts, and internet/downloadable content, which are stored on disparate data networks. *Id.* at 5:27-29. Label 42 refers to the new content management, which provides, for example, a program guide, remote control functionality, and content filtering. *Id.* at 5:45-51. Label 40 refers to potential wired and wireless networks that may be used to transfer the content from each data network to the mobile set top box. *Id.* at 5:48-51. Labels 20 and 22 refer to the mobile

computing device and the docking station, respectively. *Id.* at 5:33–35. The mobile computing device and the docking station may be combined into one device. *Id.* at 4:49–54 (“As illustrated, the cellular phone 20 merely passes information to the docking station 22 and is controlled by the docking station 22. However, the functionality of the mobile set top box 10 can be in either device. In addition, the mobile phone 20 and docking station 22 can be combined into one device.”); *see also id.* at Fig. 4. After receiving the content from the mobile computing device, the docking station up-scales the content and displays it on the television. *Id.* at 5:40–43. The connection between the docking station and television may be wired or wireless. *Id.* at 5:64–65 *see also id.* at Fig. 4.

II. Legal Principles

The general rule is that claim terms are generally given their plain and ordinary meaning. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*); *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1347 (Fed. Cir. 2014) (“There is a heavy presumption that claim terms carry their accustomed meaning in the relevant community at the relevant time.”) (vacated on other grounds). The plain and ordinary meaning of a term is the “meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips*, 415 F.3d at 1313.

“Although the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims.” *Comark Commc’ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988)). “[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in

the intrinsic record that the patentee intended the claims to be so limited.” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004).

Although extrinsic evidence can also be useful, it is “less significant than the intrinsic record in determining the legally operative meaning of claim language.” *Phillips*, 415 F.3d at 1317 (quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004)). Technical dictionaries may be helpful, but they may also provide definitions that are too broad or not indicative of how the term is used in the patent. *Id.* at 1318. Expert testimony also may be helpful, but an expert’s conclusory or unsupported assertions as to the meaning of a term are not. *Id.*

The “only two exceptions to [the] general rule” that claim terms are construed according to their plain and ordinary meaning are when the patentee (1) acts as his/her own lexicographer or (2) disavows the full scope of the claim term either in the specification or during prosecution. *Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). To act as his/her own lexicographer, the patentee must “clearly set forth a definition of the disputed claim term,” and “clearly express an intent to define the term.” *Id.* at 1365. To disavow the full scope of a claim term, the patentee’s statements in the specification or prosecution history must represent “a clear disavowal of claim scope.” *Id.* at 1366. Accordingly, when “an applicant’s statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable.” *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013).

Courts presume that the preamble does not limit the claims. *Am. Med. Sys., Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1358 (Fed. Cir. 2010) (quoting *Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1346 (Fed. Cir. 2002)) (“Generally,” we have said, “the preamble does not

limit the claims.”). But “[i]n general, a preamble limits the invention if it recites essential structure or steps, or if it is ‘necessary to give life, meaning, and vitality’ to the claim.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (quoting *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999)). “Conversely, a preamble is not limiting ‘where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention.’” *Catalina*, 289 F.3d at 808 (quoting *Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997)). The Federal Circuit has provided some “guideposts” regarding whether the preamble is limiting: (1) preamble provides antecedent basis, (2) preamble is essential to understand limitations or terms in the claim body, (3) preamble recites “additional structure or steps underscored as important by the specification,” and (4) “clear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art.” *Catalina*, 289 F.3d at 808–09.

The order in which steps of a method appear in a claim is not a limitation on that claim unless either (1) “as a matter of logic or grammar, [the steps] must be performed in the order written” or (2) the specification “directly or implicitly requires such a narrow construction.” *Altiris Inc. v. Symantec Corp.*, 318 F. 3d 1363, 1369-70 (Fed. Cir. 2003) (internal quotations and citations omitted). The specification and prosecution history can support a construction requiring the steps to be performed in the order written in the claims. *See, e.g., Loral Florchild Corp. v. Sony Corp.*, 181 F.3d 1313, 1321–22 (Fed. Cir. 1999); *Function Media, LLC v. Google, Inc.*, 708 F.3d 1310, 1320 (Fed. Cir. 2013).

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