

CLAIM CONSTRUCTION ORDER

The parties in the above-titled five cases requested the Court to construe claim terms of the following patents:

- U.S. Patent No. 8,166,081 (“’081 patent”), claims 9-11, and 23
- U.S. Patent No. 8,688,028 (“’028 patent”), claims 11, 14, 16, and 18
- U.S. Patent No. 8,903,307 (“’307 patent”), claims 11, 16, and 18
- U.S. Patent No. 9,584,843 (“’843 patent”), claims 10, 11, and 13
- U.S. Patent No. 9,143,833 (“’833 patent”), claims 1, 3, 5-7, and 9
- U.S. Patent No. 9,294,806 (“’806 patent”), claims 5-8, and 10
- U.S. Patent No. 9,355,405 (“’405 patent”), claims 12-16

The Court provided preliminary constructions on September 27, 2021 and held a claim construction hearing on September 28, 2021. After careful consideration of the parties’ briefs, oral arguments, and the applicable law, the Court enters its final constructions for each term as shown below:

Term	Plaintiff’s Proposal	Defendants’ Proposal	Court’s Final Construction
associated/associating/association terms (’307 patent claims 11, 16, and 18; ’028 patent claims 11, 14, 16, and 18; ’806 patent claims 5-8 and 10; ’843 patent claims 10-11 and 13; ’833 patent claims 1, 3, 5-7, and 9)	Plain and ordinary meaning	Indefinite under 35 U.S.C. § 112, ¶ 2	Plain and ordinary meaning
“associating each media content identifying data element with at least one of a plurality of media content” (’028 patent claims 11, 14,	Plain and ordinary meaning	Invalid under 35 U.S.C. §§ 101 and 112, ¶ 2	Plain and ordinary meaning

Term	Plaintiff's Proposal	Defendants' Proposal	Court's Final Construction
16, and 18; '307 patent claims 11, 16, and 18)			
"The method of claim 11, wherein at least one of the receiving, storing, aggregating, correlating operations are accessible by at least one of the following: a response authentication system, a broadcaster, an advertiser, a content provider, a wireless carrier, a web portal, a third party database." ('028 patent, claim 14)	Plain and ordinary meaning	Indefinite under 35 U.S.C. § 112, ¶ 2	Plain and ordinary meaning
"interactive media receiver" ('833 patent, claims 1, 3, 5-7, and 9)	Plain and ordinary meaning	Indefinite under 35 U.S.C. § 112, ¶ 2	Plain and ordinary meaning
"responder identifier" ('833 patent, claims 1, 3, 5-7, and 9)	Plain and ordinary meaning	Indefinite under 35 U.S.C. § 112, ¶ 2	Plain and ordinary meaning
"third party" ('843 patent, claims 10, 11, and 13; '806 patent, claims 5-8 and 10)	The Court should construe "third party encoded data" and "encoded third party data" as below	Indefinite under 35 U.S.C. § 112, ¶ 2	See "third party" terms below
"third party encoded data" ('806 patent, claims 5-8, and 10); "encoded third party data" ('843 patent, claims 10, 11, and 13)	"third party encoded data": "encoded data obtained from a party that is neither the source nor the recipient of the electronic transmission" "encoded third party data": "an encoding of data obtained from a party that is neither the source nor the recipient of the electronic transmission"	"third party encoded data" and "encoded third party data" should each be given their distinct plain and ordinary meanings.	Plain and ordinary meaning
"stream scanner module" ('806 patent, claims 5-8 and 10)	Plain and ordinary meaning. If 35 U.S.C. § 112 ¶ 6 (pre-AIA) applies, the function is obtaining a data stream associated with the electronic	Means-plus-function under 35 U.S.C. § 112 ¶ 6 (pre-AIA) Function for claim 5: Scan a stream to obtain a data stream associated with the electronic	Plain and ordinary meaning; § 112 ¶ 6 does not apply

Term	Plaintiff's Proposal	Defendants' Proposal	Court's Final Construction
	<p>transmission of the media segment.</p> <p>The corresponding structure is computer software and hardware that (1) obtains broadcast data in a known format such as AM, FM, Internet, satellite, WiFi, Analog Television, Digital Television, wireless, peer to peer, cable, or their equivalents, and (2) obtains from the transmission a data stream accompanying the broadcast stream in any of a number of known formats such as Radio Data System (RDS), Radio Broadcast Data System (RDBS), Data Radio Channel (DARC), Digital Audio Broadcasting (DAB), Digital Multimedia Broadcasting (DMB), Digital Video Broadcast-Handhelds (DVB-H), In Band on Channel (IBOC), Digital Radio Mondiale (DRM), or their equivalents.</p>	<p>transmission of the media segment</p> <p>Function for claim 6: Scan a stream to obtain a data stream associated with the electronic transmission of the media segment over a public broadcast.</p> <p>Structure: Indefinite</p>	
<p>“stream analysis module” (*806 patent, claims 5-8 and 10)</p>	<p>Plain and ordinary meaning.</p> <p>If 35 U.S.C. § 112 ¶ 6 (pre-AIA) applies, the function is analyzing the third party encoded data extracted from the data stream, whereby the analysis generates analysis data that includes at least an identifying data that initiates identification of</p>	<p>Means-plus-function under 35 U.S.C. § 112 ¶ 6 (pre-AIA)</p> <p>Function: Analyze a stream to analyze the third party encoded data extracted from the data stream, whereby the analysis generates analysis data that includes at least an identifying data that initiates identification of</p>	<p>Plain and ordinary meaning; § 112 ¶ 6 does not apply</p>

Term	Plaintiff's Proposal	Defendants' Proposal	Court's Final Construction
	<p>the media segment.</p> <p>The corresponding structure is software and hardware that decodes data in the Radio Data System (RDS), Radio Broadcast Data System (RBDS), Data Radio Channel (DARC), Digital Audio Broadcasting (DAB), Digital Multimedia Broadcasting (DMB), Digital Video Broadcast-Handhelds (DVB-H), In Band on Channel (IBOC), or Digital Radio Mondiale (DBM) formats, or their equivalents.</p>	<p>the media segment.</p> <p>Structure: Indefinite</p>	
<p>“correlating” (’806 patent, claims 5-8 and 10)</p>	<p>Plain and ordinary meaning</p>	<p>Indefinite under 35 U.S.C. § 112, ¶ 2</p>	<p>Plain and ordinary meaning</p>
<p>“broadcast scanning module” (’843 patent, claims 10, 11, and 13)</p>	<p>Plain and ordinary meaning</p> <p>If 35 U.S.C. § 112 ¶ 6 (pre-AIA) applies, the function is receiving the specific instance of the media segment in the electronic transmission</p> <p>The corresponding structure is computer software and hardware that (1) obtains broadcast data in a known format such as AM, FM, Internet, satellite, WiFi, Analog Television, Digital Television, wireless, peer to peer, cable, or their equivalents, and (2) obtains from the transmission a data stream accompanying the broadcast stream in any</p>	<p>Means-plus-function under 35 U.S.C. § 112 ¶ 6 (pre-AIA)</p> <p>Function: Scan a broadcast to receive the specific instance of the media segment in the electronic transmission</p> <p>Structure: Indefinite</p>	<p>Plain and ordinary meaning; § 112 ¶ 6 does not apply</p>

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