THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BRIGHT DATA LTD.	§ § §	
Plaintiff,	§ § §	
v.	§ §	Case No. 2:21-CV-225-JRG-RSP
NETNUT LTD.	§ § §	
Defendant.	§	

CLAIM CONSTRUCTION ORDER

On April 21, 2022, the Court held a hearing to determine the proper construction of disputed terms in United States Patents No. 10,257,319, 10,484,510, 10,491,713, 11,050,852, and 11,044,346. Before the Court is the Opening Claim Construction Brief (Dkt. No. 106) filed by Plaintiff Bright Data Ltd. Also before the Court is the Responsive Claim Construction Brief (Dkt. No. 115) filed by Defendant NetNut Ltd. as well as Plaintiff's reply (Dkt. No. 118). Further before the Court are the parties' Patent Rule 4-3 Joint Claim Construction Statement (Dkt. No. 93) and the parties' Patent Rule 4-5(d) Joint Claim Construction Chart (Dkt. No. 123, Ex. A). Having reviewed the arguments made by the parties at the hearing and in their claim construction briefing, having considered the intrinsic evidence, and having made subsidiary factual findings about the extrinsic evidence, the Court hereby issues this Claim Construction Order. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc); *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015).

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I. BACKGROUND

Plaintiff alleges infringement of United States Patent Nos. 10,257,319 ("the '319 Patent")

10,484,510 ("the '510 Patent"), 10,491,713 ("the '713 Patent"), 11,050,852 ("the '852 Patent")

and 11,044,346 ("the '346 Patent") (collectively, the "patents-in-suit") (Dkt. No. 106, Exs. A–E).

Plaintiff submits that the patents-in-suit relate to "new methods for fetching content from

a target server over the Internet using intermediary proxies including third-party client devices,

such as an individual's cell phone, in order to make the request from the intermediary proxy

instead of the original requestor." Dkt. No. 106 at 1.

Defendant submits that "[t]he patents are generally directed to speeding up Hypertext Transfer Protocol ('HTTP') requests by requesting the content directly from a peer who already has the content in its cache, rather than accessing it from a web server." Dkt. No. 115 at 1.

The '319 Patent, titled "System Providing Faster and More Efficient Data Communication," issued on April 9, 2019, and bears an earliest priority date of October 8, 2009. The Abstract of the '319 Patent states:

> A system designed for increasing network communication speed for users, while lowering network congestion for content owners and ISPs. The system employs network elements including an acceleration server, clients, agents, and peers, where communication requests generated by applications are intercepted by the client on the same machine. The IP address of the server in the communication request is transmitted to the acceleration server, which provides a list of agents to use for this IP address. The communication request is sent to the agents. One or more of the agents respond with a list of peers that have previously seen some or all of the content which is the response to this request (after checking whether this data is still valid). The client then downloads the data from these peers in parts and in parallel, thereby speeding up the Web transfer, releasing congestion from the Web by fetching the information from multiple sources, and relieving traffic from Web servers by offloading the data transfers from them to nearby peers.

The parties submit that all five of the patents-in-suit are related and share the same specification. *See* Dkt. No. 106 at 2 n.1; *see also* Dkt. No. 115 at 2.

"Bright Data asserts infringement of independent claim 1 and dependent claims 2, 14, 15, 17, 18, 21, 22, 23, 24, 25, 26, and 27 of the '319 Patent, independent claim 1 and dependent claims 2, 8, 9, 10, 11, 15, 16, 18, 19, 20, 22, and 23 of the '510 Patent, independent claim 1 and dependent claims 11, 24, and 27 of the '713 Patent, independent claim 1 and dependent claims 14, 25, and 28 of the '852 Patent, and independent claim 1 and dependent claims 15, 17, 20, 22, 23, 24, 25, and 26 of the '346 Patent." *Id.* at 6.

The Court previously construed disputed terms in the '319 Patent and the '510 Patent in *Luminati Networks, Ltd. v. Teso LT, UAB, et al.*, No. 2:19-CV-395, Dkt. No. 191 (E.D. Tex.

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Dec. 7, 2020) ("*Teso CC Order*"), and *Bright Data Ltd. v. Teso LT, UAB, et al.*, No. 2:19-CV-395, Dkt. No. 453 (E.D. Tex. Aug. 6, 2021) ("*Teso Supplemental CC Order*" or "*Teso Suppl. CC Order*").

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with preliminary constructions with the aim of focusing the parties' arguments and facilitating discussion. Those preliminary constructions are noted below within the discussion for each term.

II. LEGAL PRINCIPLES

"It is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.'" *Phillips*, 415 F.3d at 1312 (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). Claim construction is clearly an issue of law for the court to decide. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970–71 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). "In some cases, however, the district court will need to look beyond the patent's intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period." *Teva*, 135 S. Ct. at 841 (citation omitted). "In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence. These are the 'evidentiary underpinnings' of claim construction that we discussed in *Markman*, and this subsidiary factfinding must be reviewed for clear error on appeal." *Id.* (citing 517 U.S. 370).

To determine the meaning of the claims, courts start by considering the intrinsic evidence. *See Phillips*, 415 F.3d at 1313; *see also C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*,

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262 F.3d 1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *See Phillips*, 415 F.3d at 1314; *C.R. Bard*, 388 F.3d at 861. Courts give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the entire patent. *Phillips*, 415 F.3d at 1312–13; *accord Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

The claims themselves provide substantial guidance in determining the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314. First, a term's context in the asserted claim can be very instructive. *Id.* Other asserted or unasserted claims can aid in determining the claim's meaning because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term's meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314–15.

"[C]laims 'must be read in view of the specification, of which they are a part.'" *Id.* at 1315 (quoting *Markman*, 52 F.3d at 979). "[T]he specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *accord Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). This is true because a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow the claim scope. *Phillips*, 415 F.3d at 1316. In these situations, the inventor's lexicography governs. *Id.* The specification may also resolve the meaning of ambiguous claim terms "where the ordinary and accustomed meaning of the words used in the claims lack

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sufficient clarity to permit the scope of the claim to be ascertained from the words alone."
Teleflex, 299 F.3d at 1325. But, "[a]lthough 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)); *accord Phillips*, 415 F.3d at 1323.

The prosecution history is another tool to supply the proper context for claim construction because a patent applicant may also define a term in prosecuting the patent. *Home Diagnostics, Inc. v. Lifescan, Inc.*, 381 F.3d 1352, 1356 (Fed. Cir. 2004) ("As in the case of the specification, a patent applicant may define a term in prosecuting a patent."). "[T]he prosecution history (or file wrapper) limits the interpretation of claims so as to exclude any interpretation that may have been disclaimed or disavowed during prosecution in order to obtain claim allowance." *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 452 (Fed. Cir. 1985).

Although extrinsic evidence can 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 (citations and internal quotation marks omitted). Technical dictionaries and treatises may help a court understand the underlying technology and the manner in which one skilled in the art might use claim terms, but technical dictionaries and treatises may provide definitions that are too broad or may not be indicative of how the term is used in the patent. *Id.* at 1318. Similarly, expert testimony may aid a court in understanding the underlying technology and determining the particular meaning of a term in the pertinent field, but an expert's conclusory, unsupported assertions as to a term's definition are entirely unhelpful to a court. *Id.* Generally, extrinsic

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evidence is "less reliable than the patent and its prosecution history in determining how to read claim terms." *Id.*

The Supreme Court of the United States has "read [35 U.S.C.] § 112, ¶ 2 to require that a patent's claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2129 (2014). "A determination of claim indefiniteness is a legal conclusion that is drawn from the court's performance of its duty as the construer of patent claims." *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005) (citations and internal quotation marks omitted), *abrogated on other grounds by Nautilus,* 134 S. Ct. 2120. "Indefiniteness must be proven by clear and convincing evidence." *Sonix Tech. Co. v. Publ'ns Int'l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017).

"[P]rior orders in related cases do not bar the Court from conducting additional construction in order to refine earlier claim constructions." *TQP Dev., LLC v. Intuit Inc.*, No. 2:12-CV-180-WCB, 2014 WL 2810016, at *6 (E.D. Tex. June 20, 2014) (Bryson, J., sitting by designation).

In general, however, prior claim construction proceedings involving the same patents-in-suit are "entitled to reasoned deference under the broad principals of *stare decisis* and the goals articulated by the Supreme Court in *Markman*, even though *stare decisis* may not be applicable *per se.*" *Maurice Mitchell Innovations, LP v. Intel Corp.*, No. 2:04-CV-450, 2006 WL 1751779, at *4 (E.D. Tex. June 21, 2006) (Davis, J.); *see TQP*, 2014 WL 2810016, at *6 ("[P]revious claim constructions in cases involving the same patent are entitled to substantial weight, and the Court has determined that it will not depart from those constructions absent a strong reason for doing so."); *see also Teva*, 135 S. Ct. at 839–40 ("prior cases will sometimes be binding because

of issue preclusion and sometimes will serve as persuasive authority") (citation omitted); *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1329 (Fed. Cir. 2008) (noting "the importance of uniformity in the treatment of a given patent") (quoting *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 390 (1996)).

III. AGREED TERMS

In their February 9, 2022 Patent Rule 4-3 Joint Claim Construction and Prehearing Statement (Dkt. No. 93 at 1), in their briefing (Dkt. No. 106 at 10), and in their March 23, 2022 Patent Rule 4-5(d) Joint Claim Construction Chart (Dkt. No. 123, Ex. A at 1, 8 & 14), the parties submit the following agreed-upon construction:

Term	Agreed Construction
Preamble '319 Patent, Claim 1 '510 Patent, Claim 1 '713 Patent, Claim 1	Limiting

IV. DISPUTED TERMS

The parties present competing proposals for the level of ordinary skill in the art. "Factors that may be considered in determining [the] level of ordinary skill in the art include: (1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field." *Daiichi Sankyo Co., Ltd. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007) (citation and internal quotation marks omitted).

Plaintiff proposes: "Consistent with Plaintiff's P.R. 4-3 disclosures, with regard to the Patents-in-Suit, 'a person of ordinary skill in the art ('POSA') would be an individual who, as of

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October 8, 2009, the filing date of the shared provisional application, had a Master's Degree or higher in the field of Electrical Engineering, Computer Engineering, or Computer Science or as of that time had a Bachelor's Degree in the same fields and two or more years of experience in Internet communications.' Ex. F, Williams Declaration at ¶ 18." Dkt. No. 106 at 9.

Defendant proposes: "A POSITA would have had (1) at least a bachelor's degree in electrical engineering, computer engineering, computer science, or a similar field; (2) at least two years of practical academic or industry technical experience in the computer network field, such as serving as an engineer for an Internet service provide[r] performing network design, development, or configuration tasks, or as a software developer for network communications software or related utility software, and would be familiar with the underlying principles of Web, Internet, and network communication, data transfer, and content sharing across networks, including protocols such as the HTTP and TCP/IP protocols, and the pertinent Internet RFCs; or (3) at least three years' full-time technical experience as stated (or an equivalent combination of academic study and work experience)." Dkt. No. 115 at 3.

Because the Court's analysis herein would remain the same under either proposal (and because the parties' proposals are largely equivalent to one another), the Court does not herein further address the parties' submissions regarding level of ordinary skill in the art.

A. "client" and "client device"

"client device" ('319 Patent, Claims 1, 2, 14, 17, 22, 24, 25; '510 Patent, Claims 1, 2, 8, 10, 13, 15, 18, 19; '713 Patent, Claims 1, 11, 24, 27; '852 Patent, Claims 1, 14, 25, 28; '346 Patent, Claims 1, 15, 20)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
"Consumer computer" or, in the alternative, "communication device that is operating in the role of a client"	"a device operating in the role of a client"; some devices can be configured to operate in multiple roles including as a client or a server

Dkt. No. 93, App'x A at 1; Dkt. No. 123, Ex. A at 1, 14, 19 & 24.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with the following preliminary construction: "communication device that is operating in the role of a client."

(1) The Parties' Positions

Plaintiff argues: "[T]he term 'client device' is defined in the patent specification of the Patents-in-Suit: 'In the network 50, files are stored on computers of consumers, referred to herein as client devices 60.' ['319 Patent] at 2:44–46." Dkt. No. 106 at 10. Plaintiff also argues that Defendant's proposal "would overly broaden the meaning of the term in a manner inconsistent with" the Court's construction in *Teso*. *Id.* Plaintiff urges:

> NetNut's proposed construction of "a device operating in the role of a client" would remove any meaningful distinction between a client device and server such that any intermediary *computer* or device in a computer ↔ *computer* ↔ computer pathway satisfies both the requirements of a client device and server. This is contrary to (a) the patent claims; (b) common specification, which as discussed above defines client devices as consumer devices and further contrasts communication devices with servers; (c) the prosecution history of for example the '319 Patent; and (d) extrinsic evidence including this Court's previous claim construction orders issued in the *Teso* Action.

Id. at 12.

Defendant responds that "the word 'communication' in the Court's previous construction is unnecessary, because all devices that communicate over a network, whether clients, servers, or other devices, are understood to be 'communication devices.'" Dkt. No. 115 at 5 (citation omitted). Defendant also argues that "[t]he generic nature of the 'client device' is confirmed by the specification . . . ." *Id.* (citation omitted). Further, Defendant argues that "NetNut's construction is further confirmed by then-existing IETF RFCs, such as RFC 2616, which is referenced in the Asserted Patents." *Id.* at 7 (citations omitted). Finally, Defendant submits that "NetNut's construction is that the device can be configured to operate in different roles, consistent with the Court's previous claim construction orders." *Id.* at 8.

Plaintiff replies: "Ignoring the clear distinctions between client devices and servers that were made in the common specification and patent prosecution history, Defendant does not dispute that its proposed constructions of these terms would cause any computer intermediary in a generic *computer ↔ computer ↔ computer* pathway to satisfy both the requirements of a client device and server in an improper attempt to broaden these claim terms so as to be interchangeable." Dkt. 118 at 1. Plaintiff argues that Defendant's proposal is inconsistent with the Court's claim construction in *Teso*, and Plaintiff also argues that "[t]he common specification references but in no way limits the client device or server in reference to any RFC or protocol." *Id.* at 1–2 (citation omitted).

At the April 21, 2022 hearing, Defendant argued that the term "client device" should not be limited to any particular type of hardware. Rather, Defendant argued, the role or functionality of the device is driven by software.

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(2) Analysis

Defendant submits: "The parties originally proposed construing 'client' and 'client device' separately but agreed to construe only 'client device.'" Dkt. No. 115 at 5 n.1. Plaintiff similarly states that "[t]he same argument applies equally to 'client,' which is only recited in the context of a 'client device.'" Dkt. No. 106 at 15.

Claim 1 of the '319 Patent, for example, recites (emphasis added):

1. A method for use with a first *client device*, for use with a first server that comprises a web server that is a Hypertext Transfer Protocol (HTTP) server that responds to HTTP requests, the first server stores a first content identified by a first content identifier, and for use with a second server, the method by the first *client device* comprising:
   receiving, from the second server, the first content identifier;
   sending, to the first server over the Internet, a Hypertext Transfer Protocol (HTTP) request that comprises the first content identifier;
   receiving, the first content from the first server over the Internet in response to the sending of the first content identifier; and
   sending, the first content by the first *client device* to the second server, in response to the receiving of the first content identifier.

The specification discloses, for example, that "[d]ue to functionality provided by software stored within each communication device, which may be the same in each communication device, each communication device may serve as a client, peer, or agent." '319 Patent at 4:46–49; *see also id.* at Fig. 6.

In the *Teso CC Order*, the Court construed "client device" to mean "communication device that is operating in the role of a client." *Teso CC Order* at 10–12.

The specification also discloses:

In the network 50, files are stored on *computers of consumers*, referred to herein as *client devices 60*.

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'319 Patent at 2:44–46 (emphasis added). In the *Teso CC Order*, the Court considered this disclosure, among other evidence, and rejected a proposal that "client device" refers to a "consumer computer." *Teso CC Order* at 11.

In the *Teso Supplemental CC Order*, the Court reinforced the distinction between a client device and a server device by stating:

> The patents do not include servers as a type of 'communication device,' but that is not sufficient to construe 'client device' as unable to act as a server in all cases.
>
> Plaintiff's argument that Defendant seeks to treat client devices and servers interchangeably, citing to the Court's statement that "[Defendants] deny that they will claim client devices and servers are interchangeable general user computers" is an oversimplification of the issue. It is not that Defendants seek to "reduc[e] the recited server ↔ client device ↔ web server architecture . . . and the recited client device ↔ server ↔ web server architecture . . . as an indistinguishable computer ↔ computer ↔ computer architecture" as Plaintiffs argue. *See* Dkt. No. 242 at 4. Rather, a component can be *configured* to operate in different roles—so long as it does not "simultaneously serve as more than one of: the client device, the first server/second server, and the web server."

Teso Suppl. CC Order at 10.

Neither Plaintiff nor Defendant persuasively justifies departing from the Court's prior construction and analysis. The recital of a "client" accompanied by, and interacting with, the recited "servers" in above-reproduced Claim 1 of the '319 Patent reinforces that the recited "client" is distinct from the "servers."

For example, Plaintiff does not justify revisiting the Court's rejection of a proposal to construe a "client device" to be a "consumer" device. *See Teso CC Order* at 11. Neither the opinion of Plaintiff's expert nor the extrinsic evidence cited by Plaintiff compels otherwise. *See* Dkt. No. 106, Ex. F, Feb. 9, 2022 Williams Decl. at ¶ 24; *see also id.*, Ex. G, *Network Fundamentals Study Guide* at p. 6 of 21. Plaintiff's argument that "it is indisputable that the

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specification *never* refers to a server as a 'communication device'" likewise does not justify limiting the Court's construction to "consumer" devices. Dkt. No. 106 at 13–14.

Defendant also asserts that "a POSITA would understand 'client' and the related terms discussed here, to refer to a device operating in the r[o]le of a client but can also have the functions of a server." Dkt. No. 115 at 8. For example, Defendant cites deposition testimony of Plaintiff's expert in this regard. *See* Dkt. No. 115, Ex. E, Feb. 25, 2022 Williams dep. at 89:15–18 ("Q. Can a personal computer or workstation also have installed on it software that is configured to perform server tasks? A. Yes."). To whatever extent this would amount to a device operating in the role of a server as well as operating in the role of a client, the Court has previously found that "a component can be configured to operate in different roles—so long as it does not '*simultaneously* serve as more than one of: the client device, the first server/second server, and the web server.'" *Teso Suppl. CC Order* at 10 (citation omitted; emphasis added). The industry standard and the expert opinions relied upon by Defendant are extrinsic evidence and do not justify departing from the Court's prior analysis. *See* Dkt. No. 115 at 7–8 (discussing *id.*, Ex. F, IETF RFC 2616 § 1.3; citing *id.*, Ex. A, Feb. 9, 2022 Claffy Decl. at ¶ 27). Further, Defendant submits: "Bright Data also suggests that NetNut's construction for 'client device' includes the device simultaneously serving as more than one of the communication devices. This is not what NetNut proposes. NetNut's construction is that the device can be configured to operate in different roles, consistent with the Court's previous claim construction orders." Dkt. No. 115 at 8 (citing Dkt. No. 106 at 14).

Finally, disclosure in the specification that a "communication device 200" "contains general components of a computer" ('713 Patent at 5:52–55) does not warrant removing the word "communication" from the Court's prior construction. As noted in the prosecution history

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and as previously discussed by the Court, a "client device" is not merely a general-purpose computer. *See* Dkt. No. 106, Ex. J, '319 Patent Prosecution History, Oct. 18, 2018 Response at 4–5 (BDNET-0000304–05) ("[T]he claims involve specific networking of physical elements such as servers and clients, connected via various networks forming a specific structure and relationships, which are physical apparatuses, and are NO[T] a 'generic computer' as stated in the Action."; "[T]he claimed components as a combination perform functions that are not merely generic — It is respectfully submitted that the conventional arrangement involves fetching data by a client device from a server device, while the claims disclose a server receiving information from another server via a client device, which is unique and solves a specific problem such as anonymity when fetching information."); *see also Teso,* No. 2:19-CV-395, Dkt. No. 303 (E.D. Tex. Feb. 16, 2021) (denying Motion for Judgment on the Pleadings Under Fed. R. Civ. P. 12(c) and 35 U.S.C. § 101) ("it is the use of non-traditional client devices that transforms the Asserted Claims into non-abstract subject matter").

As to any remaining dispute regarding whether a device merely sending a request amounts to "operating in the role of a client" (*see* Dkt. No. 106 at 15; *see also* Dkt. No. 115 at 7 & 9) or whether a device merely responding to a request is operating in the role of a server, any such disputes pertain to implementation details of particular accused instrumentalities and thus present factual disputes regarding infringement rather than any legal question for claim construction. *See PPG Indus. v. Guardian Indus. Corp.*, 156 F.3d 1351, 1355 (Fed. Cir. 1998) ("after the court has defined the claim with whatever specificity and precision is warranted by the language of the claim and the evidence bearing on the proper construction, the task of determining whether the construed claim reads on the accused product is for the finder of fact"); *see also Acumed LLC v. Stryker Corp.*, 483 F.3d 800, 806 (Fed. Cir. 2007) ("[t]he resolution of

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some line-drawing problems . . . is properly left to the trier of fact") (citing *PPG*, 156 F.3d at 1355); *Eon Corp. IP Holdings LLC v. Silver Spring Networks, Inc.*, 815 F.3d 1314, 1318–19 (Fed. Cir. 2016) (citing *PPG*, 156 F.3d at 1355; citing *Acumed*, 483 F.3d at 806).

The Court therefore hereby construes **"client device"** to mean **"communication device that is operating in the role of a client."**

B. "first server"

<table>
<tr>
<td colspan="2" align="center">"first server"
('319 Patent, Claims 1, 21, 25;
'713 Patent, Claims 1, 27;
'852 Patent, Claims 1, 14, 25, 28;
'346 Patent, Claims 1, 15, 17)</td>
</tr>
<tr>
<td>Plaintiff's Proposed Construction</td>
<td>Defendant's Proposed Construction</td>
</tr>
<tr>
<td>"web server"</td>
<td>See construction for "server"; no further construction necessary.</td>
</tr>
</table>

Dkt. No. 93, App'x A at 6; Dkt. No. 123, Ex. A at 2, 14 & 19; *see id.* at 24–25.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with the following preliminary construction: "Plain meaning (apart from the Court's construction of 'server,' below)."

(1) The Parties' Positions

Plaintiff argues that "[b]ased on the plain language of the preamble, which both sides agree is limiting, the first server of the '319, '713 and '852 Patents must be a web server." Dkt. No. 106 at 16. Plaintiff also cites the opinion of its expert. *Id.*, Ex. F, Feb. 9, 2022 Williams Decl. at ¶ 25.

Defendant responds that "'[f]irst server' and 'second server' incorporate the construction for 'server' and do not need further construction." Dkt. No. 115 at 10.

Plaintiff replies: "Defendant does not dispute that the first server is a web server. Resp. at 8. Thus, it would be helpful to construe the 'first server' of the '319, '713 and '852 Patents as a 'web server,' consistent with the other Asserted Patents." Dkt. No. 118 at 3.

(2) Analysis

Plaintiff cites language in each of the preambles of Claim 1 of the '319 Patent, Claim 1 of the '713 Patent, and Claim 1 of the '852 Patent, in which the term "first server" appears and as to which the parties agree the preambles are limiting. Dkt. No. 93 at 1; Dkt. No. 123, Ex. A at 1, 8 & 14. The claim language cited by Plaintiff specifies that the "first server" "comprises a web server" or "is a web server." Plaintiff argues that "first server" should therefore be construed as "web server," but because this is already recited by other claim language, Plaintiff's proposal is redundant and unnecessary.

The Court therefore hereby construes **"first server"** to have its **plain meaning**.

C. "server" and "second server"

"server" ('319 Patent, Claims 1, 2, 17, 21, 24, 25; '510 Patent, Claims 1, 2, 8, 15, 16, 18; '713 Patent, Claims 1, 27; '852 Patent, Claims 1, 14, 25, 28; '346 Patent, Claims 1, 15, 17)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Plain and ordinary meaning	"a device operating in the role of a server"; some devices can be configured to operate in multiple roles including as a client or a server

"second server" ('319 Patent, Claims 1, 2, 17, 21, 24, 25; '713 Patent, Claims 1, 11, 24, 27; '852 Patent, Claims 1, 14, 25, 28)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
"A server that is not the client device or first server"	See construction for "server"; no further construction necessary

"second server" ('510 Patent, Claims 1, 2, 8, 15, 16, 18; '346 Patent, Claims 1, 15, 17)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
"A server that is not the client device or web server"	See construction for "server"; no further construction necessary

Dkt. No. 93, App'x A at 3, 8 & 11; Dkt. No. 123, Ex. A at 1–2, 8–9, 14–15, 19–20 & 24.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with the following preliminary constructions:

Term	Preliminary Construction
"server"	"communication device that is operating in the role of a server" [Note: A device cannot simultaneously be both a server and a client]
"second server"	"server that is not the client device"

(1) The Parties' Positions

Plaintiff submits that its proposed constructions are similar to the *Teso* construction of "second server" as meaning "a server that is not the client device." Dkt. No. 106 at 16. Plaintiff argues that "[f]or the same reasons provided above with regard to 'client device,' incorporated by reference here, the claims of the Patents-in-Suit clearly distinguish between 'server(s)' and

'client device(s)' as shown in the patent claims, patent specification, prosecution history, the *Teso* CC Order, *Teso* Supp. CC Order, *Teso* Alice Order and other extrinsic evidence." *Id.* Plaintiff further argues that "Defendant seeks to modify the Court's earlier claim construction by changing the construction from 'a server that is not the client device' to 'a device operating in the role of a server,' with the purpose of rendering any distinction between intermediary client devices and intermediary servers meaningless." *Id.* at 17.

Defendant responds that "[a]s discussed above for 'client device' and previously held by the Court, some devices can be configured to operate in multiple roles including as a client or a server," and "[a] server is a device acting in the role of a server based on the device having the capability to serve in different roles based on the needs of the network." Dkt. No. 115 at 8–9 (citations omitted). Defendant also argues that "[t]his construction for server is further confirmed by then-existing IETF RFCs, such as RFC 2616, which is referenced in the Asserted Patents." *Id.* at 9 (citations omitted).

Plaintiff replies that "[f]or the same reasons provided above as to 'client device,' Defendant's proposed construction of 'server' and 'second server,' should similarly be rejected." Dkt. No. 118 at 4.

At the April 21, 2022 hearing, Plaintiff objected to the Court's preliminary construction for "server" referring to a "communication" device. Plaintiff argued that the patents-in-suit, as well as the Court's prior findings on claim construction for these patents, distinguish between servers and communication devices. Plaintiff submitted that a "communication" device is a device used for sending messages or making phone calls. Plaintiff contrasted this with a server, which Plaintiff asserted is a "robust" piece of hardware that is "dedicated" to providing content. Plaintiff also argued that Defendant's interpretation would potentially allow for any intermediate

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device to qualify as both a "client" and a "server." As an alternative proposed construction, Plaintiff proposed: "device that is configured to be a server." In response, Defendant agreed that being a "server" requires some amount of configuration. Also, Defendant agreed with the Court's preliminary construction for "second server."

(2) Analysis

Claim 1 of the '319 Patent, for example, recites (emphasis added):

1. A method for use with a first *client device*, for use with a *first server* that comprises a web server that is a Hypertext Transfer Protocol (HTTP) server that responds to HTTP requests, the *first server* stores a first content identified by a first content identifier, and for use with a *second server*, the method by the first *client device* comprising:
  receiving, from the *second server*, the first content identifier;
  sending, to the *first server* over the Internet, a Hypertext Transfer Protocol (HTTP) request that comprises the first content identifier;
  receiving, the first content from the *first server* over the Internet in response to the sending of the first content identifier; and
  sending, the first content by the first *client device* to the *second server*, in response to the receiving of the first content identifier.

In the *Teso CC Order*, the Court construed "second server" to mean "server that is not the client device." *Teso CC Order* at 14. The Court also found that "[n]othing in the intrinsic record suggests one device cannot perform both the role of a web server and a second server." *Id.*

In the *Teso Supplemental CC Order*, the Court reinforced the distinction between a client device and a server device, stating that "a component can be configured to operate in different roles—so long as it does not '*simultaneously* serve as more than one of: the client device, the first server/second server, and the web server.'" *Teso Suppl. CC Order* at 10 (citation omitted; emphasis added).

In *Teso*, the parties did not present the word "server" itself as a disputed term. The Court hereby expressly rejects Defendant's proposal of referring generically to "a device," and the Court also rejects the opinions of Defendant's expert to the extent those opinions imply that a

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device could act as a server and as a client simultaneously. *See* Dkt. No. 115, Ex. A, Feb. 9, 2022 Claffy Decl. at ¶ 31; *see id.* at ¶¶ 28–32. Defendant's expert cites disclosure in the specification that an "agent" can respond to requests (by providing responsive information to a client) and can itself make requests (by obtaining information from a server and then passing the information to a client). *See* '319 Patent at 14:62–15:11. This disclosure regarding an "agent," however, does not warrant broadening the scope of the term "server," and the opinions of Defendant's expert in this regard are unpersuasive. *See* Dkt. No. 115, Ex. A, Feb. 9, 2022 Claffy Decl. at ¶ 31. The industry standard relied upon by Defendant is likewise extrinsic evidence and does not justify departing from the Court's analysis in *Teso*. (*See* Dkt. No. 115, Ex. F, IETF RFC 2616 § 1.3.)

As to any remaining disputes regarding whether a device merely responding to a request is "operating in the role of a server" (*see* Dkt. No. 106 at 15; *see also* Dkt. No. 115 at 9), any such disputes pertain to implementation details of particular accused instrumentalities and thus present factual disputes regarding infringement rather than any legal question for claim construction. *See PPG*, 156 F.3d at 1355 ("after the court has defined the claim with whatever specificity and precision is warranted by the language of the claim and the evidence bearing on the proper construction, the task of determining whether the construed claim reads on the accused product is for the finder of fact"); *see also Acumed*, 483 F.3d at 806 ("[t]he resolution of some line-drawing problems . . . is properly left to the trier of fact") (citing *PPG*, 156 F.3d at 1355); *Eon*, 815 F.3d at 1318–19 (citing *PPG*, 156 F.3d at 1355; citing *Acumed*, 483 F.3d at 806).

As to Plaintiff's proposals of distinguishing between the "second server" and the "first server" or the "web server," the appropriate distinctions between the different recited servers are

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already apparent on the face of the claims at issue. No explicit construction is required to express these distinctions, and Plaintiff's proposals of "or first server" and "or web server" are therefore rejected as merely tending to confuse rather than clarify the scope of these claims.

Finally, the Court does not construe "server" as a "communication" device because the oral arguments at the April 21, 2022 hearing demonstrated that including the word "communication" would introduce unnecessary confusion as to the nature of the device. *See Teso CC Order* at 12; *see also Teso Supplemental CC Order* at 10; '319 Patent at 3:17–26 ("client communication device"; "agent communication device"; "peer communication device") & 4:48–49 ("each communication device may serve as a client, peer, or agent, depending upon requirements of the network 100"). Further, the oral arguments demonstrated that the parties have a mutual understanding regarding the functions of a "server" and of the Court's prior finding that, at least for purposes of the claimed inventions, a device does not simultaneously operate as both a client and a server. The parties neither contested that "server" is a well-known term in the art nor suggested that the patentee used the word "server" to have a special meaning in the patents-in-suit.

The Court accordingly hereby construes these disputed terms as set forth in the following chart:

Term	Construction
"server" ('319 Patent, Claims 1, 2, 17, 21, 24, 25; '510 Patent, Claims 1, 2, 8, 15, 16, 18; '713 Patent, Claims 1, 27; '852 Patent, Claims 1, 14, 25, 28; '346 Patent, Claims 1, 15, 17)	**Plain meaning**

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"second server" ('319 Patent, Claims 1, 2, 17, 21, 24, 25; '713 Patent, Claims 1, 11, 24, 27; '852 Patent, Claims 1, 14, 25, 28)	"server that is not the client device"
"second server" ('510 Patent, Claims 1, 2, 8, 15, 16, 18; '346 Patent, Claims 1, 15, 17)	"server that is not the client device"

D.   "Hypertext Transfer Protocol (HTTP)," "HTTP request(s)," "Hypertext Transfer Protocol Secure (HTTPS)," and "HTTPS request(s)"

"Hypertext Transfer Protocol (HTTP)" ('319 Patent, Claims 1, 15; '510 Patent, Claims 1, 11, 16; '346 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Definite / plain and ordinary meaning	"A protocol specified by RFC 2616, that is not encrypted; distinct from HTTPS"

"HTTP request(s)" ('319 Patent, Claims 1, 15; '510 Patent, Claims 1, 11, 16; '852 Patent, Claim 1; '346 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Plain and ordinary meaning	"A request identified by http://, that is not encrypted, as specified by RFC 2616; distinct from HTTPS request(s)"

"Hypertext Transfer Protocol Secure (HTTPS)" ('713 Patent, Claim 1; '852 Patent, Claim 1; '346 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Definite / plain and ordinary meaning	"A protocol specified by RFC 2818, that is encrypted using a transport layer encryption protocol; distinct from HTTP"

"HTTPS request(s)" ('713 Patent, Claim 1; '852 Patent, Claim 1; '346 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Plain and ordinary meaning	"A request identified by https://, as specified by RFC 2818, that is encrypted using a transport layer encryption protocol; distinct from HTTP request(s)"

Dkt. No. 93, App'x A at 16, 17, 19 & 20; Dkt. No. 123, Ex. A at 2–3, 9, 15, 16, 25 & 26.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with the following preliminary constructions:

Term	Preliminary Construction
"Hypertext Transfer Protocol (HTTP)"	"HTTP protocol defined by the industry standards existing at the time of the invention"
"HTTP request(s)"	"HTTP request(s) defined by the industry standards existing at the time of the invention"
"Hypertext Transfer Protocol Secure (HTTPS)"	"HTTPS protocol defined by the industry standards existing at the time of the invention"
"HTTPS request(s)"	"HTTPS request(s) defined by the industry standards existing at the time of the invention'"

(1) The Parties' Positions

Plaintiff argues that "[e]ach of the Patents-in-Suit reference Hypertext Transfer Protocol ('HTTP'), which was a well-known Internet protocol as of the priority date . . . ." Dkt. No. 106 at 18. Plaintiff further argues:

> Defendant seeks to improperly limit these terms to a specific protocol, RFC 2616 and 2818 for HTTP and HTTPS respectively, and specifically exclude HTTP from using encryption. However, neither the claims nor the specification of the Patents-in-Suit expressly limit HTTP or HTTP request(s) to a specific protocol or bar HTTP from being used with encryption.

Dkt. No. 106 at 19 (footnote omitted).

Defendant responds that "[a]lthough the Asserted Patents use these terms, they do not explain them and instead a POSITA would understand that they have the conventional usage as known in the art." Dkt. No. 115 at 11 (citation omitted). "In fact," Defendant submits, "'HTTPS' and 'HTTPS requests' do not appear anywhere in the specification of the Asserted Patents and only appear in the claims." Id. (citation omitted). Defendant submits that "[t]he addition of encryption in HTTPS means that HTTP and HTTPS are not interchangeable, especially in the context of the Asserted Patents because intermediate devices would not be able to see the full request using HTTPS." Id. at 13 (citation omitted). Defendant argues that "[a]t no time has the standard allowed for an unencrypted content identifier to be transmitted as part of an HTTPS connection," and "[t]he encryption of the content identifier is what make HTTPS incompatible with the claimed invention." Id. (citations omitted). Finally, Defendant argues that the opinions of Plaintiff's expert, Dr. Williams, are unreliable because Dr. Williams has testified that he has no experience implementing HTTP laid over TLS or SSL. Id. at 15.

Plaintiff replies that "instead of adopting the plain and ordinary meaning of the above HTTP and HTTPS terms, Defendant seeks to incorporate limitations from specific RFC

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protocols that are not recited in the claims in order to improperly narrow the scope of the claims." Dkt. No. 118 at 5 (citation and footnote omitted). Plaintiff also submits that "[t]he patentee knew how to limit claims to specific protocols as shown in dependent claim 15 of the '319 Patent . . . but did not do so here with regard to HTTP and HTTPS in the Asserted Patent claims." *Id.* Plaintiff argues that "Defendant is attempting to add negative claim limitations to improperly exclude HTTP Secure from HTTP." *Id.* at 5–6.

At the April 21, 2022 hearing, Plaintiff stated that it had no objection to the Court's preliminary constructions, and Plaintiff argued that there are hundreds of RFCs that relate to HTTP. Defendant maintained that referring to the particular RFCs proposed by Defendant would be helpful to the finder of fact.

(2) Analysis

Claim 1 of the '319 Patent, for example, recites (emphasis added):

1. A method for use with a first client device, for use with a first server that comprises a web server that is a *Hypertext Transfer Protocol (HTTP)* server that responds to *HTTP* requests, the first server stores a first content identified by a first content identifier, and for use with a second server, the method by the first client device comprising:
    receiving, from the second server, the first content identifier;
    sending, to the first server over the Internet, a *Hypertext Transfer Protocol (HTTP)* request that comprises the first content identifier;
    receiving, the first content from the first server over the Internet in response to the sending of the first content identifier; and
    sending, the first content by the first client device to the second server, in response to the receiving of the first content identifier.

Plaintiff does not dispute that "Hypertext Transfer Protocol (HTTP)" and "Hypertext Transfer Protocol Secure (HTTPS)" are well-known terms of art. The specification refers to, "for example, a *typical* HTTP server, such as those being used to deliver content on any of the many such servers on the Internet":

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> The communication network 100 also contains a Web server 152. The Web server 152 is the server from which the client 102 is requesting information and may be, for example, *a typical HTTP server*, such as those being used to deliver content on any of the many such servers on the Internet. It should be noted that the server 152 is not limited to being an HTTP server. In fact, if a different communication protocol is used within the communication network, the server may be a server capable of handling a different protocol. It should also be noted that while the present description refers to the use of HTTP, the present invention may relate to any other communication protocol and HTTP is not intended to be a limitation to the present invention.

'319 Patent at 4:62–5:7 (emphasis added). The specification also provides an example of a request as: "GET http://www.aol.com/index.html HTTP/1.1." *Id.* at 12:64–65.

The specification explicitly refers to an industry standard for HTTP, namely "RFC 2616":

> FIG. 12 is a flowchart 500 illustrating steps taken by an agent, client, or peer to determine whether a certain HTTP request is still valid. Specifically, the following provides an example of how the agent, client, or peer can determine whether particular data that is stored within the memory of the agent, or the memory of a peer or client, still mirrors the information that is currently on the Web server. As shown by block 502, the HTTP request is looked up in the cache database of the agent, client or peer that is checking the validity of the HTTP request. *As an example, the HTTP protocol, defined by RFC 2616, outlines specific methods that Web servers can define within the HTTP headers signifying the validity of certain data, such as, but not limited to, by using HTTP header information such as "max age" to indicate how long this data may be cached before becoming invalid, "no cache" to indicate that the data may never be cached, and using other information.*

Id. at 16:12–28 (emphasis added). Although this disclosure uses the phrase "[a]s an example," a fair reading is that what is exemplary is the manner in which an HTTP request is used, not the nature of the HTTP protocol itself. *See id.* This understanding that what is an "example" is HTTP—not the nature of the HTTP protocol itself—is reinforced by the other above-reproduced disclosure that using HTTP is an example and that other communication protocols could potentially be used instead. *See id.* at 4:62–5:7.

Plaintiff asserts the doctrine of claim differentiation as to Claim 15 of the '319 Patent, which depends from Claim 14, which in turn depends from above-reproduced Claim 1. Claims 14 and 15 of the '319 Patent recite (emphasis added):

> 14. The method according to claim 1, further comprising determining, by the first client device, that the received first content, is valid.

> 15. The method according to claim 14, wherein the determining is based on the received HTTP header according to, or based on, *IETF RFC 2616*.

Claim 15 thus expressly recites RFC 2616, but the doctrine of claim differentiation is "a guide, not a rigid rule." *Wi-LAN USA, Inc. v. Apple Inc.*, 830 F.3d 1374, 1391 (Fed. Cir. 2016) (citation and internal quotation marks omitted); *see Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp.*, 831 F.3d 1350, 1360 (Fed. Cir. 2016) ("The dependent claim tail cannot wag the independent claim dog."); *see also N. Am. Vaccine, Inc. v. Am. Cyanamid Co.*, 7 F.3d 1571, 1577 (Fed. Cir. 1993) (same). Particularly in the absence of any evidence in the specification of any meaning of "HTTP" apart from industry standards, Plaintiff does not demonstrate how "HTTP" could be understood by a person of ordinary skill in the art in any manner other than in accordance with industry standards.

Moreover, Claim 1 of the '713 Patent expressly recites not only "HTTP" but also "HTTPS" (emphasis added):

> 1. A method for use with a requesting client device that comprises an *HTTP* client and is identified over the Internet by a first Internet Protocol (IP) address, for use with a first server that is a web server that is *Hypertext Transfer Protocol (HTTP)* or *Hypertext Transfer Protocol Secure (HTTPS)* server that respectively responds to *HTTP* or *HTTPS* requests and stores a first content identified by a first content identifier, for use with a second server distinct from the first web server and identified in the Internet by a second IP address, the method by the requesting client device comprising:
>   identifying, an *HTTP* or *HTTPS* request for the first content;
>   sending, to the second server using the second IP address over the Internet in response to the identifying, the first content identifier and a geographical location; and

receiving, over the Internet in response to the sending, from the second server via a first client device, the part of, or the whole of, the first content.

This claim thus itself reinforces that the term "Hypertext Transfer Protocol (HTTP)" is distinct from "Hypertext Transfer Protocol Secure (HTTPS)." *See Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1257 (Fed. Cir. 2010) ("Claims must be 'interpreted with an eye toward giving effect to all terms in the claim.'") (quoting *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006))).

Plaintiff argues that "HTTPS" is a subcategory, form, or special case of "HTTP." Plaintiff's expert opines for example that "[a] POSA would have understood HTTPS to be a secure form of HTTP." Dkt. No. 106, Ex. F, Feb. 9, 2022 Williams Decl. at ¶ 31; *see id.* ("a POSA would not understand the recited HTTP to expressly exclude the secure version of HTTP known as HTTPS"). Plaintiff's expert cites the IETF RFC 2828 "Internet Security Glossary" (attached to Plaintiff's opening brief as Exhibit N), which defines "HTTPS" as "specif[ying] the use of HTTP enhanced by a security mechanism, which is usually SSL" (*see id.*, Ex. N at 82), but Plaintiff's expert does not explain how this definition purportedly supports Plaintiff's assertion that the "HTTP" protocol *encompasses* HTTPS. *See id.*, Ex. F, Feb. 9, 2022 Williams Decl. at ¶ 31.

Defendant more persuasively argues that "HTTP" and "HTTPS" are protocols that are distinct from one another. This is suggested by the claim language, discussed above, and the opinion of Defendant's expert provides further support. *See, e.g.,* Dkt. No. 115, Ex. A, Feb. 9, 2022 Claffy Decl. at ¶¶ 40, 48 & 50.

Plaintiff's expert submits that industry standards for HTTP and HTTPS have changed over time: "While RFC 2616 issued in June 1999 obsoleting the previous RFC 2068 and was the then current protocol standard for HTTP as of the priority date of the Asserted Patents, a POSA

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would not understand the recited HTTP to be limited to the specific version of the protocol available at that time, but to include subsequent revisions such as the June 2014 version under RFC 7230." Dkt. No. 106, Ex. F, Feb. 9, 2022 Williams Decl. at ¶ 31.

This opinion of Plaintiff's expert is contrary to the principle that "[a] claim cannot have different meanings at different times; its meaning must be interpreted as of its effective filing date." *PC Connector Solutions LLC v. SmartDisk Corp.*, 406 F.3d 1359, 1363 (Fed. Cir. 2005) (citing *Markman*, 52 F.3d at 986 (en banc) ("[T]he focus is on the objective test of what one of ordinary skill in the art at the time of the invention would have understood the term to mean.") (emphasis added), *aff'd*, 517 U.S. 370 (1996)); *see also Phillips*, 415 F.3d at 1313 ("the ordinary and customary meaning of a claim term . . . at the time of the invention, i.e., as of the effective filing date of the patent application"). The Court's constructions therefore refer to the industry standards existing at the time of the invention and need not refer explicitly to RFC 2616 and RFC 2818, particularly given that RFC 2818 is a subject of expert testimony but is not cited in the specification. In sum, the intrinsic and extrinsic evidence demonstrate that the "HTTP" and "HTTPS" terms refer to protocols that operate in accordance with industry standards, and any remaining disputes pertain to the details of those standards and the implementation details of particular accused instrumentalities, which are factual disputes for competing expert testimony and do not present any further legal question for claim construction. *See PPG*, 156 F.3d at 1355 ("after the court has defined the claim with whatever specificity and precision is warranted by the language of the claim and the evidence bearing on the proper construction, the task of determining whether the construed claim reads on the accused product is for the finder of fact"); *see also Acumed*, 483 F.3d at 806 ("[t]he resolution of some line-drawing problems . . . is

properly left to the trier of fact") (citing *PPG*, 156 F.3d at 1355); *Eon*, 815 F.3d at 1318–19 (citing *PPG*, 156 F.3d at 1355; citing *Acumed*, 483 F.3d at 806).

Finally, the Court expressly rejects Defendant's proposal of referring to the presence or absence of encryption, both because the specific details of the industry standards are a matter of factual dispute between the experts (as discussed above) and also because referring to one specific feature might tend to confuse or mislead the jury or at least give potentially undue weight to this one specific feature.

The Court accordingly hereby construes these disputed terms as set forth in the following chart:

Term	Construction
"Hypertext Transfer Protocol (HTTP)"	**"HTTP protocol defined by the industry standards existing at the time of the invention"**
"HTTP request(s)"	**"HTTP request(s) defined by the industry standards existing at the time of the invention'"**
"Hypertext Transfer Protocol Secure (HTTPS)"	**"HTTPS protocol defined by the industry standards existing at the time of the invention"**
"HTTPS request(s)"	**"HTTPS request(s) defined by the industry standards existing at the time of the invention'"**

E. "from the first server over the Internet in response to the sending" and "from the web server over the Internet in response to the sending"

"from the first server over the Internet in response to the sending" ('319 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Definite / plain and ordinary meaning	Plain meaning; the claim requires an affirmative step performed by the first server / web server

"from the web server over the Internet in response to the sending" ('510 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Definite / plain and ordinary meaning	Plain meaning; the claim requires an affirmative step performed by the first server / web server

Dkt. No. 93, App'x A, at 22; Dkt. No. 123, Ex. A at 3 & 9–10.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with

the following preliminary constructions:

Term	Preliminary Construction
"from the first server over the Internet in response to the sending"	"receiving, the first content from the first server over the Internet in response to the sending of the first content identifier": "the first server sending, and the first client device receiving, the first content over the Internet in response to the sending of the first content identifier"
"from the web server over the Internet in response to the sending"	"receiving, the first content from the web server over the Internet in response to the sending of the first content identifier": "the web server sending, and the first client device receiving, the first content over the Internet in response to the sending of the first content identifier"

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(1) The Parties' Positions

Plaintiff argues that "[t]here is no recited element performed by the first/web server," and "Defendant's improper proposal to insert an unclaimed limitation should be rejected." Dkt. No. 106 at 21 & 22.

Defendant responds that "[t]hese terms require an affirmative step performed by the first server ('319 Patent) or the web server ('510 Patent)," and "the claims require the first server and web server respectively to receive the first content identifier and then send the content to the client device." Dkt. No. 115 at 16 (citations omitted). Defendant also argues that "[t]he prosecution history of the '319 Patent confirms the intent was for the first server to perform an affirmative step." *Id.* at 17.

Plaintiff replies that "[a]ll recited claim steps are performed by the first client device— none are performed by the first server/web server." Dkt. No. 118 at 6. Plaintiff argues that "Defendant and Defendant's expert mischaracterizes the recited elements of the claims," and "Defendant and [its expert] also misrepresent the prosecution history." *Id.* at 6–7 (citation and footnote omitted).

At the April 21, 2022 hearing, Defendant agreed with the Court's preliminary constructions. Defendant argued that the prosecution history makes clear that the server is performing an "action," which Defendant argues makes sense because the client cannot respond to itself. Plaintiff responded that the "action" being referred to by the patentee was the receiving step cited in the sentence preceding the sentence relied upon by Defendant. Plaintiff urged that this prosecution history related to an aspect of the network *environment* and did not create an additional claim requirement.

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(2) Analysis

Claim 1 of the '319 Patent, for example, recites (emphasis added):

1. A method for use with a first client device, for use with a first server that comprises a web server that is a Hypertext Transfer Protocol (HTTP) server that responds to HTTP requests, the first server stores a first content identified by a first content identifier, and for use with a second server, the *method by the first client device* comprising:
　　　receiving, from the second server, the first content identifier;
　　　sending, to the first server over the Internet, a Hypertext Transfer Protocol (HTTP) request that comprises the first content identifier;
　　　receiving, the first content *from the first server over the Internet in response to the sending* of the first content identifier; and
　　　sending, the first content by the first client device to the second server, in response to the receiving of the first content identifier.

Defendant argues that for the content from the first server to be "*in response* to the sending of the first content identifier," the first server must have performed some affirmative act, such as sending the first content to the first client device.

Defendant cites *Luminati Networks Ltd. v. NetNut Ltd.*, No. 2:20-CV-188, Dkt. 211 at 8–10 (E.D. Tex. Sept. 30, 2021), in which the Court addressed a motion for summary judgment of non-infringement as to different patents. The Court found as to the patents there at issue that a "receiving" step performed by a client device required "sending" to be performed by a recited server. *Id.* at 8; *see id.* at 10 ("the 'second server' is not merely an environmental limitation, but rather an active one due to the affirmative steps it performs"). This analysis is inapplicable as to the present disputed terms because the recited "sending" is recited as being performed by the first client device, not by the first server. The *Acceleration Bay* case discussed therein and cited here by Defendant is likewise distinguishable. *See id.* at 9–10 (discussing *Acceleration Bay LLC v. Electronic Arts Inc.*, No. 1:16-CV-00454-RGA, 2019 WL 1376036, at *5 (D. Del. Mar. 27, 2019)).

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Defendant also submits that, during prosecution of the '319 Patent, in a section of an office action response titled "Mistake in claim interpretation," the patentee argued as follows regarding the "Fang" reference (United States Patent Application Publication No. 2006/0212542):

> Further, the claim explicitly recites that the receiving of the first content [is] "from the first server over the Internet i*n response to the sending* of the first content identifier" (Emphasis added). The [Office] Action and the Fang reference are silent regarding any such action <u>in response to the sending</u> of the first content identifier.

Dkt. No. 106, Ex. J, '319 Patent Prosecution History, Oct. 18, 2018 Response / Amendment at 10 (BDNET-0000310) (original italics omitted; original bolding shown here as italics; underlining shown here as in original). The examiner responded by issuing a Notice of Allowability, noting that "none of the references of record alone or in combination disclose or suggest the combination of limitations specified in independent claim 1," and "the Examiner agrees that the limitations of the independent claims, within its environment, is allowable subject matter over the prior art, in light of the specification and in view of the Applicant's arguments." *See id.*, Jan. 23, 2019 Notice of Allowability at 2–3 (BDNET-0000067–74) (emphasis omitted).

One possible interpretation of this prosecution history is that the "action" referred to by the patentee is the "first server" *responding* to the first client device having "sen[t], to the first server over the Internet, a Hypertext Transfer Protocol (HTTP) request that comprises the first content identifier." *Id.*, Oct. 18, 2018 Response / Amendment at 10 (emphasis added).

There are, however, other reasonable interpretations. In its briefing, Plaintiff argues that "[t]he 'action' clearly references 'the sending of the first content identifier,' which is performed *by the first client device in the preceding step of the claim*." Dkt. No. 106 at 21 n.4. At the April 21, 2022 hearing, Plaintiff argued that the "action" referred to by the patentee in this

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prosecution history is the recited *receiving* of the first content, not any sending by the first server. Plaintiff's arguments at the hearing were persuasive that the "action" could be the receiving by the first client device.   In particular, Plaintiff argued that the patentee can be understood as having argued that Fang did not disclose sending the first content identifier and therefore did not disclose receiving in response to such sending.   At least for purposes of the present dispute, Plaintiff's arguments demonstrate that Defendant's interpretation is not the only reasonable interpretation of this prosecution history.

Because this prosecution history is "subject to multiple reasonable interpretations," it "do[es] not constitute a clear and unmistakable departure from the ordinary meaning of the term . . . ." *Golight, Inc. v. Wal-Mart Stores, Inc.*, 355 F.3d 1327, 1332 (Fed. Cir. 2004); *see Omega Eng'g Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003) ("As a basic principle of claim interpretation, prosecution disclaimer promotes the public notice function of the intrinsic evidence and protects the public's reliance on *definitive* statements made during prosecution.") (emphasis added); *see also id.* at 1325–26 ("for prosecution disclaimer to attach, our precedent requires that the alleged disavowing actions or statements made during prosecution be both clear and unmistakable").   Based on all of the foregoing, the Court hereby expressly rejects Defendant's proposed construction, and no further construction is necessary. *See U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997) ("Claim construction is a matter of resolution of disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims, for use in the determination of infringement.   It is not an obligatory exercise in redundancy."); *see also O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008) ("[D]istrict courts are not (and should not be) required to construe every limitation present in a patent's asserted claims."); *Finjan, Inc. v. Secure*

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Computing Corp., 626 F.3d 1197, 1207 (Fed. Cir. 2010) ("Unlike *O2 Micro*, where the court failed to resolve the parties' quarrel, the district court rejected Defendants' construction."); *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1326 (Fed. Cir. 2012); *Summit 6, LLC v. Samsung Elecs. Co., Ltd.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015); *Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 977–79 (Fed. Cir. 2021).

The Court therefore hereby construes **"receiving, the first content from the first server over the Internet in response to the sending of the first content identifier"** and **"receiving, the first content from the web server over the Internet in response to the sending of the first content identifier"** to have their **plain meaning**.

F. "sending, to the second server using the second IP address over the Internet in response to the identifying, the first content identifier and a geographical location," "generating an HTTP or HTTPS request that comprises the first URL and a geographical location," "sending, to the second server using the second IP address over the Internet, the generated HTTP or HTTPS request," and "sending, . . . a geographical location and HTTP or HTTPS requests"

"sending, to the second server using the second IP address over the Internet in response to the identifying, the first content identifier and a geographical location" ('713 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Plain and ordinary meaning	Plain meaning; requires sending a geographical location distinct from the first content identifier, not something from which the geographical location is derived

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"generating an HTTP or HTTPS request that comprises the first URL and a geographical location" ('852 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Plain and ordinary meaning	"the HTTP or HTTPS request must include the first URL and a geographical location distinct from the first URL, not something from which the geographical location is derived"

"sending, to the second server using the second IP address over the Internet, the generated HTTP or HTTPS request" ('852 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Plain and ordinary meaning	Plain meaning; "sending the generated HTTP or HTTPS request that includes the first URL and the actual geographical location distinct from the first URL, not something from which the geographical location is derived"

"sending, to the first server over the Internet, a geographical location and HTTP or HTTPS requests" ('346 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Plain and ordinary meaning	Plain meaning; "sending a geographical location distinct from the HTTP or HTTPS requests, not something from which the geographical location is derived"

Dkt. No. 93, App'x A at 25, 37, 39 & 45; Dkt. No. 123, Ex. A at 16, 21–22 & 26.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with the following preliminary construction: "Plain meaning [Note: Expressly reject Defendant's proposal of 'not something from which the geographical location is derived']."

At the April 21, 2022 hearing, each party stated that it had no objection to the Court's preliminary construction.

The Court therefore hereby construes **"sending, to the second server using the second IP address over the Internet in response to the identifying, the first content identifier and a geographical location," "generating an HTTP or HTTPS request that comprises the first URL and a geographical location," "sending, to the second server using the second IP address over the Internet, the generated HTTP or HTTPS request,"** and **"sending, to the first server over the Internet, a geographical location and HTTP or HTTPS requests"** to have their **plain meaning**.

G. "receiving . . . via a first client device"

"receiving, over the Internet in response to the sending, from the second server via a first client device" / "receiving . . . via a first client device" ('713 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Definite / plain & ordinary meaning	See construction for "receiving . . . via a first client device"; no further construction necessary / "receiving directly from a peer device not through the second server"

"receiving, over the Internet in response to the sending, from the second server via a first client device" / "receiving . . . via a first client device" ('852 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Definite / plain & ordinary meaning	See construction for "receiving . . . via a first client device"; no further construction necessary / "receiving directly from a peer device not through the second server"

Dkt. No. 93, App'x A at 32; Dkt. No. 123, Ex. A at 17 & 22.

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Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with the following preliminary construction: "Plain meaning [Note: Expressly reject Defendant's proposal 'from a peer device')]."

(1) The Parties' Positions

Plaintiff argues that "Defendant attempts to require the requesting client device to receive the content from a 'peer device' that is not a recited element of the claim." Dkt. No. 106 at 25.

Defendant responds that "[t]he sole architecture embodiment of the Asserted Patents is shown in Figure 3," and "there is no 'client device' between the requesting client device and the second server (agent 122)." Dkt. No. 115 at 21 (citation omitted). Defendant also argues: "[D]ependent claims describe the process by which the requesting client device receives the content from the peer device (the 'first client device'), not directly from the second server. In other words, the dependent claims confirm the understanding based on the specification, which is that the claimed 'receiving . . . via a first client device' means receiving the content from the first client device, not from the second server, as described in the only embodiment of the specification." *Id.* at 23 (citation omitted). Finally, Defendant argues that "the Court should not construe 'receiving . . . via a first client device' to cover receiving the content through a second server (such as a proxy server) and not directly from the first client device because such an arrangement does not have written description support in the specification." *Id.* at 23–24.

Plaintiff replies that "Defendant is attempting to rewrite the claim to require the requesting client device to be a 'peer device' and to prohibit the requesting client device from receiving the first content from the first server." Dkt. No. 118 at 8. Plaintiff argues that "Defendant's proposed architecture is clearly in error as inconsistent with the claim language, which in context recites '*receiving* over the Internet in response to the sending, *from the second*

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server via a first client device, the part of, or the whole of, the first content.'" *Id.* at 9. Plaintiff

urges that "[t]his attempt to rewrite the claims to move the first client device outside the

communication pathway is improper and should be rejected." *Id.*

At the April 21, 2022 hearing, Plaintiff stated that it had no objection to the Court's

preliminary construction. Defendant maintained its proposals of "from a peer device."

Defendant also urged that if the Court does not adopt Defendant's proposal of "from a peer

device," then the Court should clarify the meaning of "via."

(2) Analysis

Claim 1 of the '713 Patent, for example, recites (emphasis added):

1. A method for use with a requesting client device that comprises an HTTP
client and is identified over the Internet by a first Internet Protocol (IP) address,
for use with a first server that is a web server that is Hypertext Transfer Protocol
(HTTP) or Hypertext Transfer Protocol Secure (HTTPS) server that respectively
responds to HTTP or HTTPS requests and stores a first content identified by a
first content identifier, for use with a second server distinct from the first web
server and identified in the Internet by a second IP address, the method by the
requesting client device comprising:
   identifying, an HTTP or HTTPS request for the first content;
   sending, to the second server using the second IP address over the Internet
in response to the identifying, the first content identifier and a geographical
location; and
   *receiving, over the Internet in response to the sending, from the second
server via a first client device, the part of, or the whole of, the first content.*

As to Defendant's proposal of "receiving directly from a peer device," the parties present

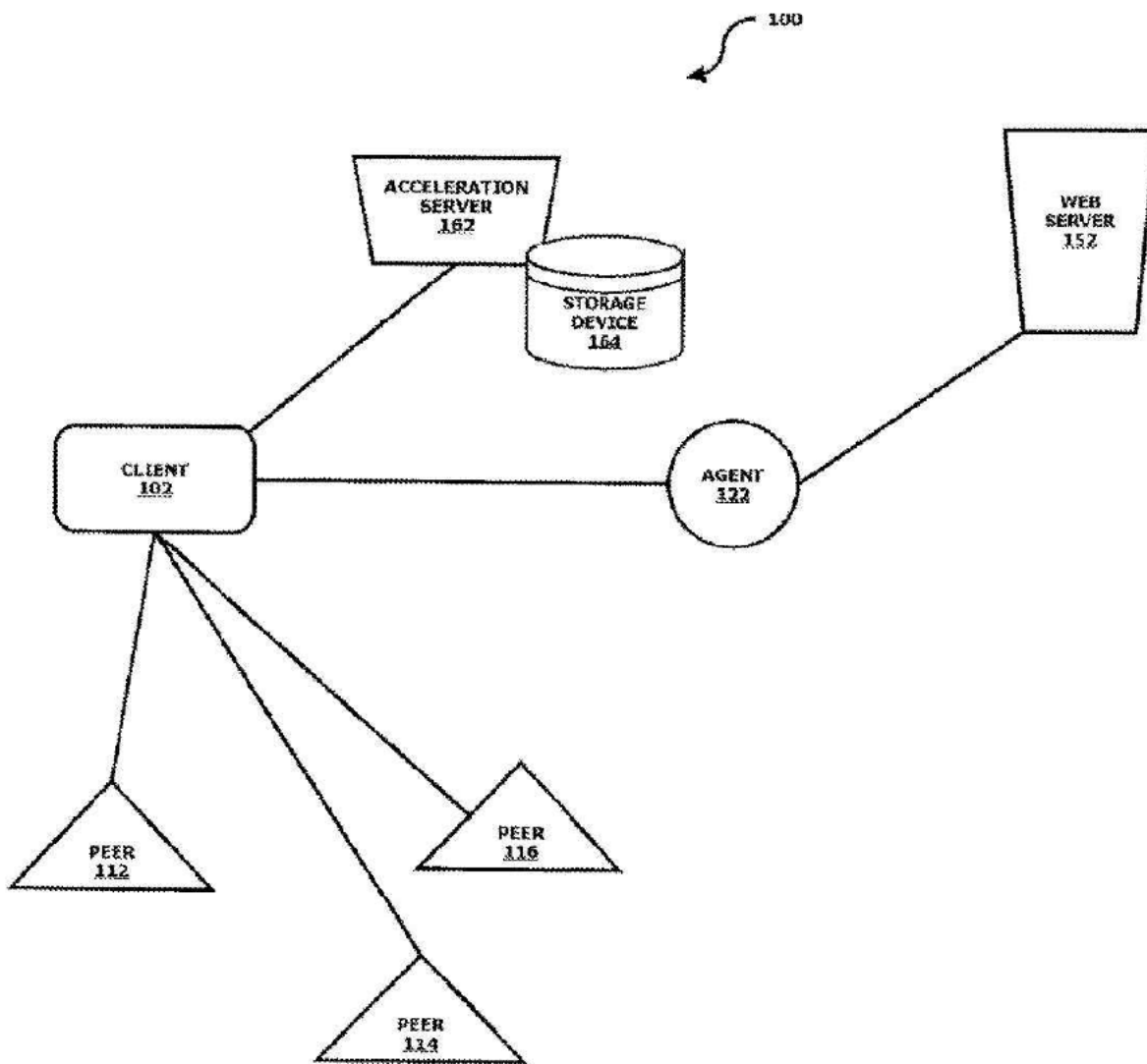competing interpretations of Figure 3 of the patents-in-suit, which is reproduced here:

FIG. 3

Defendant submits an annotated version of Figure 3, showing Defendant's interpretation of the "first client device" as being a "peer" device, as follows:

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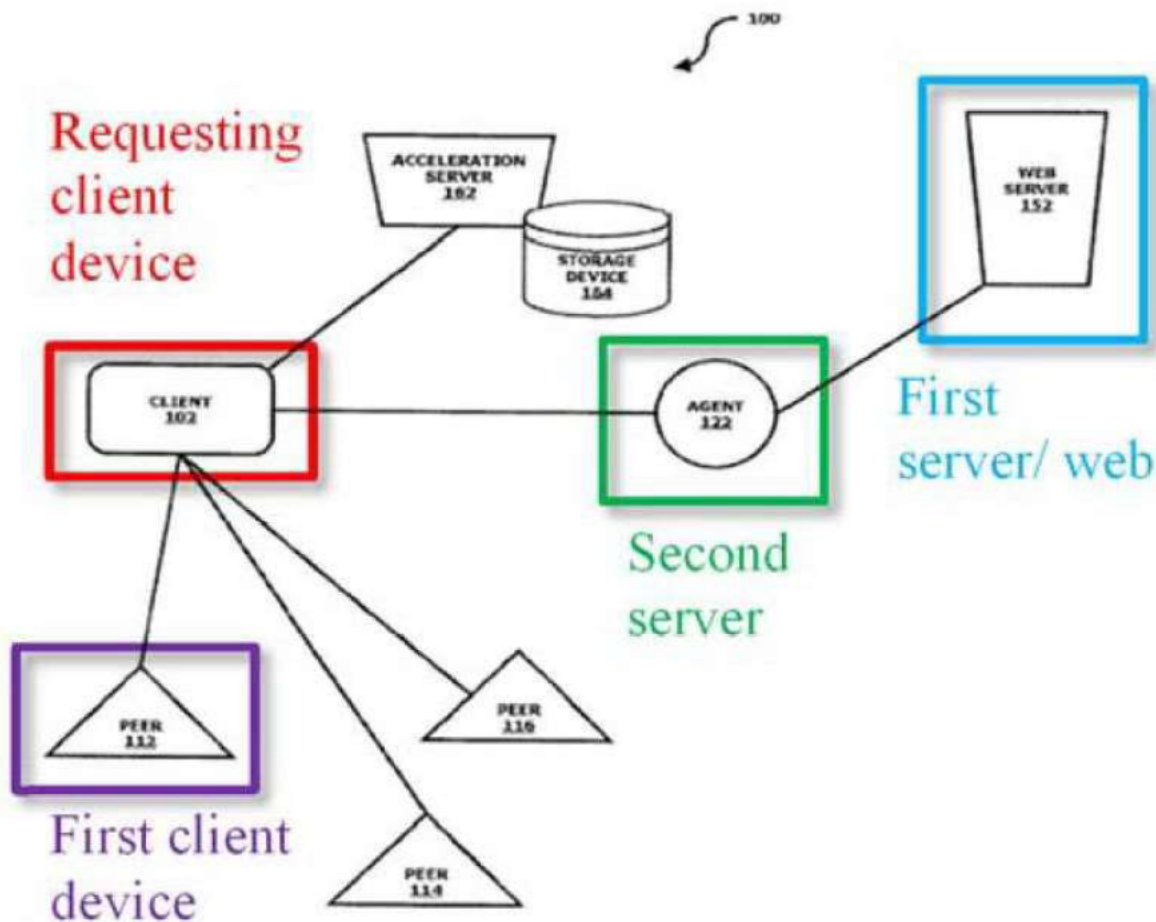IPR2022-00138, EX. 2013
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FIG. 3

'713 Patent, FIG. 3 (annotated).

First, Defendant's proposal of a "peer device" is unclear because the claims here at issue do not recite a "peer device" and because "each communication device may serve as a client, peer, or agent, depending upon requirements of the network 100." '319 Patent at 4:48–50. Second, Defendant's analysis of Figure 3 identifies "agent 122" as a server, but the specification does not limit agent 122 in this fashion. For example, Defendant does not persuasively justify precluding the agent 122 of Figure 3 from corresponding to the "first client device" recited in the claims here at issue. The opinions of Defendant's expert in this regard are unpersuasive. *See*

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Dkt. No. 115, Ex. A, Feb. 9, 2022 Claffy Decl. at ¶¶ 77–78. Also, as to disclosure in the specification cited by Defendant that a client receives content from a peer using a list of peers sent by an agent, this pertains to specific features of particular disclosed embodiments that should not be imported into the claims. *See* '713 Patent at 13:57–61, 14:42–58, 15:13–23, Fig. 10 & Fig. 15; *see also Phillips*, 415 F.3d at 1323. The Court hereby expressly rejects Defendant's proposal of "from a peer device."

The claim language does, however, support Defendant's contention that the content cannot be received directly from the second server. This is required by the phrase "from the second server *via a first client device*," in which "via a first client device" would have no apparent significance in the claim if the content could be received directly from the second server. *See Merck & Co. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) ("A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.")

This is also consistent with dependent claims, cited by Defendant, which recite particular details regarding receiving the content in a manner other than directly from the second server. For example, dependent Claim 3 of the '713 Patent recites "selecting, by the requesting client device, the IP address of the first client device from the received list of IP addresses, and sending the first content identifier to the first client device." As another example, dependent Claim 13 of the '713 Patent recites "selecting, by the requesting client device, the first client device from a plurality of client devices." '713 Patent, Cls. 3 & 13; *see id.*, Cl. 26; *see also* '852 Patent, Cls. 3, 16, 17 & 27. Although dependent claims are necessarily narrower than the independent claims from which they depend, these dependent claims are consistent with interpreting "via a first

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client device" in the independent claims as requiring that the content is *not* received directly from the second server.

Plaintiff, however, acknowledges that the content is received via a first client device, not received directly from the second server. *See* Dkt. No. 118 at 9 ("The first content must be received from the second (web) server through the first client device (agent), which is consistent with the claims.") (footnote omitted).

Because Plaintiff does not dispute this, and because "via a first client device" is expressly recited by these claims (Clam 1 of the '713 Patent and Claim 1 of the '852 Patent), no explicit construction is necessary. Finally, to whatever extent either party is arguing that this limitation precludes intervening elements, any such interpretation is hereby expressly rejected because these are "comprising" claims. *See Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("'Comprising' is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim."). Instead, the claim language on its face merely recites that the content originates with the second server and is communicated by way of the first client device.

The Court therefore hereby construes the **"receiving, over the Internet in response to the sending, from the second server via a first client device"** terms to have their **plain meaning**.

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H. "geographical location"

"geographical location" ('713 Patent, Claim 1; '852 Patent, Claim 1; '346 Patent, Claim 1)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Not indefinite / plain and ordinary meaning	Indefinite

Dkt. No. 93, App'x A at 24–25; Dkt. No. 123, Ex. A at 16–17 & 22.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with

the following preliminary construction: "Plain meaning (Not indefinite)."

(1) The Parties' Positions

Plaintiff argues that "[t]he term 'geographical' is used in the specification and claims of

the Patents-in-Suit consistent with the terms plain meaning," and "[h]ad the Examiner believed

'geographical location' to be indefinite, one would have expected the Examiner to issue a

rejection on that basis instead of a notice of allowance." Dkt. No. 106 at 28.

Defendant responds that "[a] POSITA, after reviewing the specification, would not be

able to discern the scope of the term 'geographical location' with reasonable certainty because

the specification does not define or provide any guidance with respect to the meaning of this

term," and "the specification only refers to 'geographical' in relation to geographical proximity

of communication devices, not the location." Dkt. No. 115 at 24 & 25 (citations and footnote

omitted). Defendant argues that "[o]ther than the broad recitation of it being generated or sent,

each claim fails to define in any manner how it is used in the context of the claimed invention to,

for example, identify or provide content." *Id.* at 25 (citation omitted). Finally, Defendant

submits that "[t]he prosecution histories of the '713, '852, and '346 Patents also do not provide

any guidance that would allow a POSITA to understand the scope of 'geographical location' with reasonable certainty," and "Bright Data's argument that citing to 'geographical location' during prosecution indicates that the examiner considered whether the term is indefinite is misguided." *Id.* at 26 (citations omitted).

Plaintiff replies that "Defendant's argument that the independent claims do not recite a use of the 'geographical location' does not render the term indefinite, as a POSA would still understand the scope of 'geographical location,'" and "Defendant[] [is] wrong to the extent that [it] assert[s] indefiniteness based on the breadth of the claims." Dkt. No. 118 at 9.

At the April 21, 2022 hearing, Plaintiff had no objection to the Court's preliminary construction. Defendant reiterated the arguments set forth in Defendant's briefing. In particular, Defendant reiterated that the only disclosure in the specification regarding "geographical" pertains to proximity and does not provide any clarity regarding "geographical location."

(2) Analysis

Claim 1 of the '713 Patent, for example, recites (emphasis added):

1. A method for use with a requesting client device that comprises an HTTP client and is identified over the Internet by a first Internet Protocol (IP) address, for use with a first server that is a web server that is Hypertext Transfer Protocol (HTTP) or Hypertext Transfer Protocol Secure (HTTPS) server that respectively responds to HTTP or HTTPS requests and stores a first content identified by a first content identifier, for use with a second server distinct from the first web server and identified in the Internet by a second IP address, the method by the requesting client device comprising:
    identifying, an HTTP or HTTPS request for the first content;
    sending, to the second server using the second IP address over the Internet in response to the identifying, the first content identifier and a *geographical location*; and
    receiving, over the Internet in response to the sending, from the second server via a first client device, the part of, or the whole of, the first content.

On one hand, although the specification refers to "geographical proximity," the specification does not refer to geographical "location." *See* '713 Patent at 14:52–58 ("As shown

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by block 394, the list of peers for each chunk is sorted by geographical proximity to the requesting client. In accordance with the present example, only the five closest peers are kept in the list for every chunk, and the rest of the peers are discarded from this list. As shown by block 396, the prepared response, namely, the list of closest peers, is sent back to the client."). Disclosure regarding IP addresses being "numerically close" perhaps provides some additional context regarding geographical proximity, but this does little if anything to shed any further light on the meaning of "geographical location." '319 Patent at 13:25–29 ("The list of agents is created by the acceleration server 162 by finding the communication devices of the communication network 100 that are currently online, and whose IP address is numerically close to the IP of the destination Web server 152.").

On the other hand, this disclosure regarding "geographical proximity" demonstrates that the patents-in-suit use "geographical" in accordance with its meaning in common parlance. Defendant shows no indication that the term "geographical location" is a specialized term of art or that there is otherwise any reason to doubt that the patentee used this term in accordance with its plain and ordinary meaning. Defendant's argument that "[t]here is also no recitation of how it is used in the claimed method" (Dkt. No. 115 at 25) is likewise unavailing, and the opinions of Defendant's expert in this regard are unpersuasive. *See* Dkt. No. 115, Ex. A, Feb. 9, 2022 Claffy Decl. at ¶¶ 83–87.

On balance, Defendant has not met its burden to show any lack of reasonable certainty arising out of the patentee's use of this term. *See Nautilus*, 134 S. Ct. at 2129; *see also Sonix*, 844 F.3d at 1377.

The Court therefore hereby expressly rejects Defendant's indefiniteness argument, and no further construction is necessary.

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The Court accordingly hereby construes **"geographical location"** to have its **plain meaning**.

I. "anonymously fetching"

"anonymously fetching" ('346 Patent, Claims 1, 15, 17)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Definite / plain & ordinary meaning	Indefinite

Dkt. No. 93, App'x A at 44; Dkt. No. 123, Ex. A at 25.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with the following preliminary construction: "Plain meaning (Not indefinite)."

(1) The Parties' Positions

Plaintiff argues that "[a]s described above, the Patents-in-Suit disclose[] the use of an intermediary to fetch content from a web server," and "[b]readth is not indefiniteness." Dkt. No. 106 at 29 (citation and internal quotation marks omitted).

Defendant responds that "[a] POSITA, after reviewing the specification, would not be able to discern the scope of the 'anonymously fetching' by the first server because the '346 Patent does not provide any guidance with respect to the meaning of this phrase." Dkt. No. 115 at 27 (citation omitted); *see id.* at 27–28. Defendant also argues that the prosecution history cited by Plaintiff does not inform the meaning of this term. *Id.* at 28–29.

Plaintiff replies, in full: "Dr. Williams provided his opinion that this term should be construed with its plain and ordinary meaning, which is consistent with the prosecution history of the '346 Patent, which clearly indicates anonymity for the user or requesting client device.

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Defendant fails to address the prosecution history cited by Dr. Williams and the term should not be found indefinite." Dkt. No. 118 at 10.

At the April 21, 2022 hearing, Plaintiff had no objection to the Court's preliminary construction. Defendant reiterated the arguments set forth in Defendant's briefing.

(2) Analysis

This disputed term appears in Claim 1 of the '346 Patent, which recites (emphasis added):

> 1. A method for fetching a content by a requesting client device from a web server, the content comprises multiple parts where each part is identified by a distinct Uniform Resource Locator (URL), for use with a first server that is configured for *anonymously fetching* the multiple parts from the web server using intermediate devices, the method by the requesting client device comprising:
>   executing an application;
>   identifying the multiple parts as part of executing the application;
>   sending, to the first server over the Internet, a geographical location and HTTP or HTTPS requests for the URLs of the multiple parts and; and
>   receiving, over the Internet in response to the sending and the geographical location, from the first server, the content,
>   wherein each of the multiple parts consists of, or comprises, a web-page or a portion thereof.

During prosecution, the patentee responded to an office action by distinguishing the "Gandhi" reference (United States Patent No. 8,577,724) as follows:

> Claim 1 recites ". . . for use with a first server that is configured for *anonymously fetching* the multiple parts from the web server using intermediate devices" (Emphasis added). However, not only [sic] the Gandhi reference in general, and the cited passage in particular, do not teach any anonymous fetching, but rather the cited reference teaches away from any anonymous fetching. For example, col. 25 lines 40–57 [of Gandhi] clearly dictates various identifying user information, and such information is described throughout the Gandhi reference for adapting ads to the specific user.

Dkt. No. 106, Ex. P, Apr. 4, 2021 Response / Amendment at 2 (italics omitted; original bolding shown as italics). The patentee thus distinguished "anonymously fetching" from a process that

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included "various identifying user information," which demonstrates that the patentee used "anonymously" in a manner consistent with its meaning in common parlance. *See id.*

Defendant argues that "the specification of the '346 Patent provides no guidance as to understanding of this phrase, including what device is anonymous to what other device." Dkt. No. 115 at 27–28; *see id.* at 28 ("[W]here is the anonymity considered? Must the requesting client be anonymous to the first server? Must the first server be anonymous to the web server? Do the 'intermediate devices' have to participate in the anonymizing?   What defines 'anonymous' in this context? What does it mean for the first server to be 'configured for' anonymously fetching when the '346 Patent does not provide any example of such configuration?").

Although Defendant demands greater certainty, the indefiniteness standard demands only reasonable certainty. *See Nautilus*, 134 S. Ct. at 2129. Viewing Claim 1 of the '346 Patent as a whole and in light of the above-reproduced prosecution history, Defendant does not meet its burden to show indefiniteness. *See Sonix*, 844 F.3d at 1377. In particular, the recital of "anonymously fetching the multiple parts from the web server using intermediate devices" frames the anonymity as being in relation to the "web server" and as being achieved through the use of "intermediate devices."

Any remaining dispute regarding the scope of "anonymously" is a question of fact for the finder of fact rather than a question of law for claim construction. *See PPG*, 156 F.3d at 1355 ("after the court has defined the claim with whatever specificity and precision is warranted by the language of the claim and the evidence bearing on the proper construction, the task of determining whether the construed claim reads on the accused product is for the finder of fact"); *see also Acumed*, 483 F.3d at 806 ("[t]he resolution of some line-drawing problems . . . is

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properly left to the trier of fact") (citing *PPG*, 156 F.3d at 1355); *Eon*, 815 F.3d at 1318–19 (citing *PPG*, 156 F.3d at 1355; citing *Acumed*, 483 F.3d at 806).

No further construction is necessary. *See U.S. Surgical*, 103 F.3d at 1568; *see also O2 Micro*, 521 F.3d at 1362; *Finjan*, 626 F.3d at 1207; *ActiveVideo*, 694 F.3d at 1326; *Summit 6*, 802 F.3d at 1291; *Bayer*, 989 F.3d at 977–79. Finally, to the extent that Defendant argues that the specification does not describe "anonymously fetching" content (*see* Dkt. No. 115 at 27–28), Defendant's argument perhaps may bear upon issues of enablement or written description but does not give rise to indefiniteness. The opinions of Defendant's expert in this regard do not compel otherwise. *See id.*, Ex. A, Feb. 9, 2022 Claffy Decl. at ¶¶ 92–93.

The Court therefore hereby construes **"anonymously fetching"** to have its **plain meaning**.

J. "wherein the content is identified over the Internet using a distinct URL"

"wherein the content is identified over the Internet using a distinct URL" ('346 Patent, Claim 23)	
Plaintiff's Proposed Construction	**Defendant's Proposed Construction**
Not indefinite; plain and ordinary meaning	Indefinite

Dkt. No. 93, App'x A at 47; Dkt. No. 123, Ex. A at 28.

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with the following preliminary construction: "Plain meaning (Not indefinite)."

<u>(1) The Parties' Positions</u>

Plaintiff cites the opinion of its expert that: "[A] POSA would understand that both the content and parts of the content may each have a distinct URL. For example, content may comprise a web site identified by a distinct URL comprising parts consisting for example of

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multiple webpages, each of which may comprise their own distinct URL." Dkt. No. 106 at 30 (quoting *id.*, Ex. F, Feb. 9, 2022 Williams Decl. at ¶ 57). Plaintiff argues that "[t]his is also consistent with other dependent claims including claim 25, which recites 'wherein each of the multiple parts consists of, or comprises, an HTML object of a web-page.'" Dkt. No. 106 at 30.

Defendant responds that "[t]he phrase 'wherein the content is identified over the Internet using a distinct URL' fails to inform a POSITA with reasonable certainty about the scope of the claim because it conflicts with a limitation recited in claim 1 from which it depends." Dkt. No. 115 at 29 (citation omitted). Whereas Claim 1 requires multiple parts, each of which is identified by a distinct URL, Defendant argues that "[i]n contrast, the plain meaning of claim 23 requires that the content, which is made up of multiple URLs, also be identified using a single URL." *Id.* (citation omitted). Defendant concludes that "[b]ecause content cannot be made up of multiple URLs *and* also be identified with a single URL, a POSITA could not discern with reasonable certainty the scope of the claimed invention and therefore the phrase is indefinite." *Id.* at 29–30.

Plaintiff replies, in full: "As above, Defendant fails to address Dr. Williams' declaration and the supporting intrinsic evidence on which his opinion relies. As opined by Dr. Williams 'a POSA would understand that both the content and parts of the content may each have a distinct URL.' Ex. F at �ℙ 57. For the reasons provided above, the Court should not find this term indefinite." Dkt. No. 118 at 10.

At the April 21, 2022 hearing, Plaintiff had no objection to the Court's preliminary construction. Defendant reiterated the arguments set forth in Defendant's briefing.

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(2) Analysis

This disputed term appears in Claim 23 of the '346 Patent, which depends from Claim 1.

Claims 1 and 23 of the '346 Patent recite (emphasis added):

> 1. A method for fetching *a content* by a requesting client device from a web server, *the content comprises multiple parts where each part is identified by a distinct Uniform Resource Locator (URL),* for use with a first server that is configured for anonymously fetching the multiple parts from the web server using intermediate devices, the method by the requesting client device comprising:
> executing an application;
> identifying the multiple parts as part of executing the application;
> sending, to the first server over the Internet, a geographical location and HTTP or HTTPS requests for the URLs of the multiple parts and; and [*sic*]
> receiving, over the Internet in response to the sending and the geographical location, from the first server, *the content,*
> wherein each of the multiple parts consists of, or comprises, a web-page or a portion thereof.
>
> * * *
>
> 23. The method according to claim 1, *wherein the content is identified over the Internet using a distinct URL.*

Defendant does not persuasively support its assertion that "content cannot be made up of multiple URLs *and* also be identified with a single URL." *Id.* at 29–30. The opinion of Defendant's expert is likewise unpersuasive. *See* Dkt. No. 115, Ex. A, Feb. 9, 2022 Claffy Decl. at ¶ 97.

The Court therefore expressly rejects Defendant's indefiniteness argument. Defendant presents no alternative proposed construction, so no further construction is necessary.

The Court accordingly hereby construes **"wherein the content is identified over the Internet using a distinct URL"** to have its **plain meaning**.

V. CONCLUSION

The Court adopts the constructions set forth in this opinion for the disputed terms of the patent-in-suit.

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The parties are ordered that they may not refer, directly or indirectly, to each other's claim construction positions in the presence of the jury. Likewise, the parties are ordered to refrain from mentioning any portion of this opinion, other than the actual definitions adopted by the Court, in the presence of the jury. Any reference to claim construction proceedings is limited to informing the jury of the definitions adopted by the Court.

SIGNED this 10th day of May, 2022.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

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