

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

WAG ACQUISITION, L.L.C.,

Plaintiff,

v.

AMAZON.COM, INC., AMAZON WEB
SERVICES, INC., and AMAZON.COM
SERVICES LLC.,

Defendants.

Case No. 6:21-cv-00815-ADA

JURY TRIAL DEMANDED

PLAINTIFF'S SUR-REPLY CLAIM CONSTRUCTION BRIEF

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TABLE OF DISPUTED TERMS AND CONSTRUCTIONS

Item	WAG’s Proposed Constructions	Amazons’s Proposed Constructions
<p>Item 1: “as required to maintain about a predetermined number of media data elements”</p> <p>’594 Patent, claims 1, 6, 11.</p>	<p>Plain and ordinary meaning.</p>	<p>Indefinite under § 112.</p>
<p>Item 2: “playback rate”</p> <p>’594 Patent, claims 1, 6, 11; ’824 Patent, claims 1, 5, 9; ’636 Patent, claims 1, 5, 9.</p>	<p>Plain and ordinary meaning.</p>	<p>A rate at which the data is encoded for playback to a user.</p>
<p>Item 3: “data rate”</p> <p>’594 Patent, claims 1, 6, 11; ’824 Patent, claims 1, 5, 9; ’636 Patent, claims 1, 5, 9.</p>	<p>Plain and ordinary meaning.</p>	<p>The actual rate at which the data connection delivers data to the [media player / requesting user system] at any given time.</p>
<p>Item 7: “the media source”</p> <p>’594 Patent, claims 1, 6, 11.</p>	<p>Plain and Ordinary Meaning</p>	<p>The storage device or live source device from which the streaming material originates.</p>

I. DISPUTED CONSTRUCTIONS¹

A. “the media source” (’594 Patent, claims 1, 6, 11)

The ’594 Patent, in its preamble, recites “a media source.” The word “source” is commonly understood to refer to a facility from which something comes or can be obtained. As argued in WAG’s Responsive Brief, on its face, this can be any source of media, *i.e.*, any upstream source from which media comes.

For methods and systems for a “media player to receive and play an audio or video program,” which is the subject matter of the claims of the ’594 Patent, the media source is wherever that player gets its media, regardless of where the media originated. That is the plain meaning of the term media source – the source of the media for the player in question.

Contrary to Amazon’s argument (Amazon Reply Br. at 1), WAG is not re-writing the claims. The source of a player’s media is what sends media to the player. The player is not at all concerned with the original place from which the media may have originated, but rather just where it gets the media to play.

Amazon’s interpretation that the “media source” must be the device that “originates” the media does not reflect the ordinary meaning of the word “source,” but rather a special, limited interpretation.

However, any special meaning assigned to a term “must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.” *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998).

¹ WAG contends that, unless otherwise noted, the Disputed Terms may be construed consistently across the Asserted Patents.

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