

**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**

**TABLE OF CONTENTS**

**I. DISPUTED CONSTRUCTIONS..... 1**

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

B. “playback rate” (’594 Patent, claims 1, 6, 11; ’824 Patent, claims 1, 5, 9; ’636 Patent, claims 1, 5, 9) ..... 4

C. “data rate” (’594 Patent, claims 1, 6, 11; ’824 Patent, claims 1, 5, 9; ’636 Patent, claims 1, 5, 9) ..... 4

D. “as required to maintain about a predetermined number of media data elements” (’594 Patent, claims 1, 6, 11) (alleged indefinite, but with alternate (disputed) construction proposed) ..... 5

**II. CONCLUSION..... 7**

**TABLE OF AUTHORITIES**

	<b><u>PAGE(S)</u></b>
<b>Cases</b>	
<i>Multiform Desiccants, Inc. v. Medzam, Ltd.</i> , 133 F.3d 1473 (Fed. Cir. 1998).....	1
<i>Oatey Co. v. IPS Corp.</i> , 514 F.3d 1271 (Fed. Cir. 2008).....	3
<i>Ortho-McNeil Pharm., Inc. v. Caraco Pharm. Labs., Ltd.</i> , 476 F.3d 1321 (Fed. Cir. 2007).....	5

**TABLE OF DISPUTED TERMS AND CONSTRUCTIONS**

<b>Item</b>	<b>WAG’s Proposed Constructions</b>	<b>Amazons’s Proposed Constructions</b>
<p><b>Item 1:</b> “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><b>Item 2:</b> “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><b>Item 3:</b> “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><b>Item 7:</b> “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 CONSTRUCTIONS<sup>1</sup>

### 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).

---

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

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.