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

WAG ACQUISITION, L.L.C.,

        Plaintiff,

   vs.

GOOGLE LLC and YOUTUBE, INC.,

        Defendants.

Case No.: 6:21-cv-00816-ADA

JURY TRIAL DEMANDED

DEFENDANTS GOOGLE LLC AND YOUTUBE, LLC'S REPLY CLAIM CONSTRUCTION BRIEF

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Table of Disputed Terms and Constructions

Term	Google's Construction	WAG's Construction
"as required to maintain about a predetermined number of media data elements" ('594 Patent, cls. 1, 6, 11)	Indefinite	Plain and ordinary meaning
"a predetermined number of media data elements" ('594 Patent, cls. 1, 6, 11)	"a specified number of media data elements, set prior to the start of playback of the audio or video program"	Plain and ordinary meaning
"the media source" ('594 Patent, cls. 1, 6, 11)	"the storage device or live source device from which the streaming material originates"	Plain and ordinary meaning
"each sending is at a transmission rate as fast as the data connection between the server system and each requesting user system allows" ('824 Patent, cls. 1, 5, 9; '636 Patent, cls. 1, 5, 9)	Indefinite	Plain and ordinary meaning
"all of the media data elements that are sent by the server system to the requesting user systems are sent from the data structure under the control of the server system as the media data elements were first stored therein" ('824 Patent, cls. 1, 5, 9; '636 Patent, cls. 1, 5, 9)	"all of the media data elements that are sent by the server system to the requesting user systems are sent from the same data structure under the control of the server system and in the same format as the media data elements were first stored therein"	Plain and ordinary meaning
"supplying, at the server system, media data elements representing the program" ('824 Patent, cls. 1, 5, 9; '636 Patents, cls. 1, 5, 9)	"creating, at the server system, media data elements representing the program"	Plain and ordinary meaning

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I.   INTRODUCTION

Under the guise of "plain and ordinary meaning," Plaintiff WAG Acquisition L.L.C. ("Plaintiff") proposes constructions that conflict with the claims as a whole and that find no support in the specification. For the terms amenable to construction, Defendants Google LLC and YouTube, LLC (collectively, "Google") proposed constructions that are not only grounded in the language of the claims, but also align with the intrinsic record. For these reasons, as demonstrated below, Google's constructions should be adopted. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (construction that "stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction.").

Google further identified certain terms that are indefinite because they are subject to multiple potential interpretations, where the patent specification provides no guidance on which interpretation is correct. The parties have agreed to the correct interpretation of one of the terms ("all of the media data elements . . . were first stored therein"), but for the other two terms, Plaintiff does not dispute the fact that the terms are subject to multiple interpretations, nor does Plaintiff identify any objective boundaries in the patent specification that define the scope of these terms. Instead, Plaintiff essentially argues that the lack of objective boundaries should be excused in this case. Plaintiff's arguments are inconsistent with the patent claims, the patent specification, and the law and should be rejected by the Court.

II.   DISPUTED CLAIM TERMS

A.   "as required to maintain about a predetermined number of media data elements" ('594 Patent, cls. 1, 6, 11)

For this term, Plaintiff fails to show that the specification or prosecution history gives a guidepost or any other objective bound for what range of media data elements satisfies "about a predetermined number."

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