

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

**TOUCHSTREAM TECHNOLOGIES, INC.,**

*Plaintiff,*

v.

**CHARTER COMMUNICATIONS, INC., et  
al.,**

*Defendants.*

**TOUCHSTREAM TECHNOLOGIES, INC.,**

*Plaintiff,*

v.

**COMCAST CABLE COMMUNICATIONS,  
LLC, D/B/A XFINITY, et al.,**

*Defendants.*

**Lead Case No. 2:23-cv-00059-JRG**  
Member Case No. 2:23-cv-00062-JRG

**JURY TRIAL DEMANDED**

**TOUCHSTREAM TECHNOLOGIES, INC.'S REPLY IN SUPPORT OF  
ITS OPENING CLAIM CONSTRUCTION BRIEF**

## I. DISPUTED CLAIM TERMS

### A. Terms Common to Multiple Patents

1. “media player” (’251 Patent claims 1, 2) / “media player application” (’751 Patent claims 12, 13, 14, 16) / “media playing application” (’934 Patent claims 17, 18, 19)

Touchstream’s Proposal	Defendants’ Proposal
No construction necessary. Plain and ordinary meaning.	“application software for playing back video content.” (’251 Patent)
	“application software for playing back content” (’751 and ’934 Patents)

The terms “media player,” “media player application,” and “media playing application” are not technical jargon—they are common terms. Contrary to Defendants’ arguments, the plain and ordinary meaning of a “media player application” is easily understood: a “media player” is simply software for playing media. And there can be no doubt that the jury will be familiar with this common term and its meaning. For example, the most popular operating system in the world, Microsoft Windows, named its software application for playing media “Windows Media Player.” While Defendants tout Touchstream’s description of a “media player” during prosecution, the prosecution description of “media player” is coextensive with the plain and ordinary meaning of this term. As such, the prosecution history does not give rise to an actual claim scope dispute or require instructing the jury with a judicial claim construction.

As discussed in Touchstream’s opening brief, a juror will understand what is or is not a “media player.” ECF 36 at 3. On this point, Defendants strain to justify their construction by citing antiquated devices such as a VCR. But it borders on absurd to think the jury might confuse using a “media playing application” to cast digital content onto a TV with playing VHS tapes on a VCR.

Defendants’ proposed constructions are unnecessary and would serve only to confuse rather than clarify. The jury is well equipped to understand the “media player” terms, and no alternative definitions are necessary.

**2. “a synchronization code” / “the synchronization code” (’251 Patent claims 1, 8, 9, and ’751 Patent claim 12)**

<b>Touchstream’s Proposal</b>	<b>Defendants’ Proposal</b>
No construction necessary. Plain and ordinary meaning.	“Must be the same ‘synchronization code’ throughout the claim.”

Defendants’ brief makes clear that their proposed construction is a non-infringement argument masquerading as a claim construction dispute. Defendants read a non-infringement position into the claims for the express purpose of challenging the imagined testimony of Touchstream’s expert witness. *See* ECF 40 at 9. The jury, however, does not need the Court’s aid to understand that “a synchronization code” and “the synchronization code” refer to the same code.

Nor do Defendants provide any rationale for construing this term. Claim construction “is a matter of resolution of disputed meanings and technical scope....” *O2 Micro Intern. Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). Defendants do not address any dispute regarding claim scope or meaning. And Defendants offer no authority supporting their contention that imagined future testimony is a basis for entering a construction. Because the jury will not benefit from a construction of this term and Defendants’ proposal does not resolve any actual dispute as to claim scope, a plain and ordinary construction is appropriate.

**3. “synchronization code” (’251 Patent claims 1, 8, 9, and ’751 Patent claim 12)**

<b>Touchstream’s Proposal</b>	<b>Defendants’ Proposal</b>
No construction necessary. Plain and ordinary meaning.	“a code which can be obtained by a user from the [display device / content presentation device] and provided by the user to the

	[personal computing device / remote computing device]”
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Defendants argue that “synchronization code” has no plain and ordinary meaning in the art. Yet the ordinary meaning of “synchronization code” is simple—a code used in synchronizing. Tellingly, Defendants do not propose to construe “synchronization code” at all, but rather seek to insert unclaimed limitations regarding how a synchronization code may be communicated between a display/content presentation device and a personal/remote computing device. Defendants miss the mark. The ’251 and ’751 Patents do not require a user to “obtain” or “provide” the synchronization code, and Defendants’ arguments improperly import limitations into the claims.

First, Defendants sidestep the actual claim language. As discussed in Touchstream’s opening brief, Claim 1 of the ’251 Patent and Claim 12 of the ’751 Patent set forth requirements for the “synchronization code,” including the elements involved in “assigning,” “receiving,” and “obtaining” it. *See* ECF 36 at 6. Notably absent from the claims is any suggestion that a “user” obtain the synchronization code—or that a “user” do anything at all. *Id.* at 6-7. Defendants’ attempt to insert a “user” is an improper attempt to concoct a joint infringement defense that is absent from the claims as-written. Defendants do not even attempt to confront the dichotomy between their proposed construction and the express language of the claims. *See* ECF 40 at 10-13.

Second, Defendants misread the specification. Defendants argue that a user *must* enter the synchronization code into the personal computing device. *See* ECF 40 at 11. But, the patents disclose that a user *can* select a display device by entering a synchronization code, not that the user *must* do so. ’251 Patent 5:14-16. As discussed in Touchstream’s opening brief, the specification recites several embodiments where a user neither obtains nor provides the synchronization code. ECF 36 at 7-8. Defendants attempt to diminish these embodiments, but in so doing they prove the inaccuracy of their proposed construction and their reading of the specification.

For example, when discussing an embodiment wherein the synchronization code is represented by a QR code, Defendants state, “obviously, the user must aim the device’s camera at the display in order to capture the image.”<sup>1</sup> ECF 40 at 13. But even if a user aims a device’s camera, the *user* does not “obtain” or “provide” the synchronization code. Rather, the device obtains the synchronization code via interpreting the QR image it captures. Even in this example, the user does not act as an intermediary to relay the synchronization code, as would be required by Defendants’ proposed construction. Defendants’ proposed construction not only contradicts the claim language but also would exclude embodiments in the specification.

The specification also suggests that IP and MAC addresses can be used as synchronization codes. ’251 Pat., at 2:24–26 (“The synchronization code *can* be different from an IP address associated with the display device and/or a media access control [MAC] address associated with the display device.”) (emphasis added). Again, Defendants’ construction improperly excludes these embodiments. Dependent claim 9 explicitly contemplates this situation, reciting “[t]he method of claim 8 wherein the synchronization code is different from an IP address associated with the display device and is different from a MAC address associate with the display device.” ’251 Pat., 12:22–25; *Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1376 (Fed. Cir. 2009) (“claim 1 cannot be construed ... without making claim 25 redundant.”). The patents plainly contemplate the use of an IP or MAC address for a synchronization code, neither of which are read or typed by users.

Third, Defendants’ proposed construction improperly imports limitations from a particular embodiment into the claims. “[E]ven when a patent only describes a single embodiment, the claims

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<sup>1</sup> Touchstream does not admit that Defendants’ premise has merit but discusses Defendants’ argument on its own terms for the sake of argument.

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