

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

VOIP-PAL.COM, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 6:20-cv-00267-ADA
	§	
META PLATFORMS, INC. and	§	JURY TRIAL DEMANDED
WHATSAPP LLC,	§	
	§	
Defendants.	§	

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VOIP-PAL.COM, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 6:20-cv-00269-ADA
	§	
GOOGLE LLC,	§	JURY TRIAL DEMANDED
	§	
Defendant.	§	

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VOIP-PAL.COM, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 6:20-cv-00272-ADA
	§	
AMAZON.COM, INC., et al.,	§	JURY TRIAL DEMANDED
	§	
Defendants.	§	

**DEFENDANTS' REPLY CLAIM CONSTRUCTION BRIEF**

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## I. “network element[s]”

The term “network element” is indefinite because a POSITA would not understand its meaning with reasonable certainty. As Dr. Vijay Madiseti confirms, a POSITA would not know whether the claimed “network element” is limited to a single device or could comprise multiple devices, or if “network element” refers to a logical structure in software and does not encompass any specific physical devices at all. *See* Dkt. No. 73-1<sup>1</sup> ¶ 34.

Unable to resolve these ambiguities, VoIP-Pal and its expert (Dr. Mangione-Smith<sup>2</sup>) sidestep the question. Rather than affirmatively state a POSITA would understand the term to comprise multiple devices and logical structures, Dr. Mangione-Smith states (the legal conclusion) that the term is not indefinite “even if” it is so broad.<sup>3</sup> *See* Dkt. No. 84-4 ¶ 25 (“Even if the term ‘network element’ is broad enough to cover multiple devices that work together to implement a network function, that does not make the term indefinite.”). Thus, the principal questions remain unanswered: Does the term “network element” refer to one device or multiple devices, and does the term “network element” instead refer to mere logical structures?

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<sup>1</sup> Unless otherwise noted, all docket numbers identified herein refer to entries in Case No. 6:20-cv-00267-ADA. Equivalent entries, albeit with different docket numbers, appear in all other cases identified on the caption page of this brief.

<sup>2</sup> VoIP-Pal circumvents the Court’s page limits by citing five pages of Dr. Mangione-Smith’s declaration without any explanation at all. *See* Dkt. No. 84 (“Resp. Br.”), 9–10, n.28, 32. The Court should therefore disregard Dr. Mangione-Smith’s unexplained testimony that is only improperly incorporated by reference, and not linked to the issues presented in VoIP-Pal’s brief.

<sup>3</sup> To be clear, Defendants are not arguing that the term is indefinite merely because it may be broad; rather, Defendants are pointing out that the patent fails to provide reasonable clarity on just how broad the term is in this context. This Court has found a claim term indefinite under similar circumstances. *See Mirror Imaging, LLC v. Bank of Am., N.A.*, Case No. 6:21-cv-00463-ADA, Dkt. No. 29, 2 (W.D. Tex. Feb. 22, 2022) (finding “wherein the first entity and the second entity are distinct or related” indefinite); *see also id.*, Dkt. No. 20, 15 (arguing for the indefiniteness of that term because it “can have many different meanings” in light of the absence of “explanation or guidance in the specification”).

In their effort to avoid resolving the ambiguities in “network element,” VoIP-Pal and Dr. Mangione-Smith argue that “[i]t is not necessary to answer any of these implementation questions to understand the bounds of the claims with reasonable certainty.” Resp. Br., 8; Dkt. No. 84-4 ¶ 25. But these are more than mere “implementation questions”—they are essential to determining the scope of the claims. By way of example, an “implementation question” for a claim directed to a “car” could include whether the implementation is an SUV or sedan. But that is not the issue here. Instead, an analog to the issue here is whether the term “car” is itself limited to one car or is broad enough to encompass a fleet of cars, or whether a “car” could be a purely logical representation of a car (such as a picture). This goes to the heart of determining claim scope and is precisely the issue left unresolved by the ’606 patent.

Reworking its proposed construction from prior litigation, VoIP-Pal now contends that a “network element” is “a device *or component* of the communication network associated with *at least one* IP address.”<sup>4</sup> Compare Resp. Br., 8, with Dkt. No. 73-14, 189 (construing “network element” as “a network device associated with a network address.”). But VoIP-Pal’s new construction still fails to resolve the uncertainty in claim scope because it is unclear whether the “component” (a term never used in the patent’s specification nor in VoIP-Pal’s construction from a previous matter) is physical or logical in nature, and the construction provides no guidance regarding whether “network element” refers to one device or multiple devices. VoIP-Pal’s construction is also internally inconsistent. VoIP-Pal and Dr. Mangione-Smith rely on a text that identifies as “network elements” things that do *not* have an IP address, including “cables, multiplexors, [and] line systems” (Dkt. No. 84-2, 295), while simultaneously insisting that an assigned IP address is the defining characteristic of a network element. See Resp. Br., 8. This

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<sup>4</sup> All emphasis is added unless indicated otherwise.

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