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 and Counterclaimant NETFLIX, INC.

Attorneys for Defendants-Counterclaimants
 ROVI CORPORATION, ROVI
 TECHNOLOGIES CORPORATION, ROVI
 GUIDES, INC. (F/K/A GEMSTAR-TV GUIDE
 INTERNATIONAL), and UNITED VIDEO
 PROPERTIES, INC., and Counterclaimants
 APTIV DIGITAL, INC. and STARSIGHT
 TELECAST, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

NETFLIX, INC.,

Plaintiff,

v.

ROVI CORPORATION; ROVI
 TECHNOLOGIES CORPORATION; ROVI
 GUIDES, INC. (f/k/a GEMSTAR-TV GUIDE
 INTERNATIONAL); and UNITED VIDEO
 PROPERTIES, INC.,

Defendants.

ROVI CORPORATION; ROVI
 TECHNOLOGIES CORPORATION; ROVI
 GUIDES, INC. (f/k/a GEMSTAR-TV GUIDE
 INTERNATIONAL); UNITED VIDEO
 PROPERTIES, INC.; APTIV DIGITAL, INC.;
 and STARSIGHT TELECAST, INC.,

Counterclaimants,

Case No. 4:11-CV-6591 PJH

**JOINT CLAIM CONSTRUCTION AND
 PREHEARING STATEMENT
 PURSUANT TO PATENT LOCAL RULE
 4-3**

Date: March 25, 2015
 Time: 2:00 p.m.
 Dept.: Courtroom 3, 3rd Floor
 Judge: Honorable Phyllis J. Hamilton

Date Comp. Filed: December 21, 2011

Trial Date: None

v.
NETFLIX, INC.,
Counterdefendant.

NETFLIX, INC.
Counterclaimant,

v.
ROVI CORPORATION; UNITED VIDEO
PROPERTIES, INC.; APTIV DIGITAL, INC.;
and STARSIGHT TELECAST, INC.
Counterdefendants.

Pursuant to Patent Local Rule 4-3 and the Court's standing order for patent cases, Rovi Corporation, Rovi Technologies Corporation, Rovi Guides, Inc. (f/k/a Gemstar-TV Guide International), United Video Properties, Inc., Aptiv Digital, Inc., and StarSight Telecast, Inc. (collectively, "Rovi") and Netflix, Inc. ("Netflix") hereby provide the following Joint Claim Construction and Prehearing Statement. The five patents-in-suit for which there are claim terms in dispute are attached as Exhibits A-E.

I. The Construction of Terms on Which the Parties Agree (Patent L.R. 4-3(a))

Pursuant to Patent L.R. 4-3(a), the parties submit that they have agreed on the construction of the terms set forth in the following chart:

Claim Language (Agreed-Upon Terms in Bold)	Agreed-Upon Construction
U.S. Patent No. 6,898,762	
wherein the interactive television program guide client is wherein the interactive television program guide client is	AGREED-UPON CONSTRUCTION: wherein the interactive television program guide client is
Found in claim numbers: '762 Patent: 13	
televiBion	AGREED-UPON CONSTRUCTION: television
Found in claim numbers: '762 Patent: 13	

II. Proposed Construction of Disputed Terms (Patent L.R. 4-3(b))

Pursuant to Patent L.R. 4-3(b), the Parties' proposed constructions of all disputed terms, along with the identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, are set forth in the following chart.¹²

¹ Statement by Rovi: Rovi objects to any attempt by Netflix to argue claim construction issues in its Motion for Summary Judgment of Invalidity Under 35 U.S.C. §101 or any other future pleading for claim terms not presented

Rovi reserves the right to rely on any evidence cited by Netflix in connection with construction of any of the disputed terms listed below.

Netflix reserves the right to rely on any evidence cited by Rovi in connection with construction of any of the disputed terms listed below.

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
A method for use in a client-server interactive television program guide system [or] program guide server [or] program guide client [or] A method for use in an interactive program guide	program guide PROPOSED CONSTRUCTION: an application that produces display screens identifying the channels and times on which television programs will air program listing PROPOSED CONSTRUCTION: information identifying the channel and time on which a television program will air or previously has aired	program guide PROPOSED CONSTRUCTION: a guide that displays program listings program listing PROPOSED CONSTRUCTION: plain and ordinary meaning or, if a definition is needed, "information about available programs"

herein. Neither party moved for leave under Civ. L. R. 7-11 to designate additional terms for construction pursuant to the Court's Standing Order for Patent Cases and Rovi believes any attempt to argue claim construction in any other pleading is contrary to the Patent Local Rules and the Court's Standing Order for Patent Cases which permit only ten terms to be construed without leave of Court. Rovi also objects to the extent Netflix argues for claim constructions in its Motion for Summary Judgment that are different than those presented herein. Rovi reserves the right to address the plain and ordinary meaning of claim terms or any alleged Netflix plain and ordinary meaning of claim terms in response to Netflix's Motion for Summary Judgment and any future pleading, especially as Netflix appears to adopt claim constructions of terms under the guise of plain and ordinary meaning that are an obvious attempt to disregard this Court's rule limiting the parties to the construction of 10 terms and one Markman hearing.

² Statement by Netflix: Netflix contends that the Joint Claim Construction Statement is not the appropriate place for the parties to advance argument regarding Netflix's pending Motion for Summary Judgment of Invalidity Under 35 U.S.C. §101, and Netflix disagrees with Rovi's mischaracterization of Netflix's motives and intentions in the previous footnote. Nonetheless, Netflix objects to any attempt by Rovi—in its opposition to Netflix's Motion for Summary Judgment of Invalidity Under 35 U.S.C. §101 or in any other future pleading—to construe any claim terms other than those terms that Rovi has offered for construction below. Netflix also objects to the extent Rovi argues for claim constructions—in its opposition to Netflix's Motion for Summary Judgment of Invalidity Under 35 U.S.C. §101 or in any other future pleading—that are different than those presented herein.

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
system [or] program guide Found in claim numbers: '762 Patent: 1, 6, 13, 15, 17 '709 Patent: 13, 17 generating a viewing history database comprising program listings and associated program criteria [or] program listing database [or] program listing Found in claim numbers: '709 Patent: 13, 14, 17, 18	DICTIONARY/TREATISE DEFINITIONS: European Telecommunications Standards Institute (ETSI), TR 101 288 v.1.2.1, "Television systems; Code of practice for an Electronic Programme Guide (EPG)," at 8-15 [NETFLIXNDCAL00009537- 44], 17 [NETFLIXNDCAL00009546], 30 [NETFLIXNDCAL00009559]; Digital Audio-Visual Council (DAVIC), 1.1 Specification Pt. 1, at 28 [NETFLIXNDCAL00001316], 37 [NETFLIXNDCAL00001325]. INTRINSIC EVIDENCE: '762 Patent Title³; '762 Patent Abstract; '762 Patent col. 1:16- 4216; '762 Patent col. 1:57- 65; '762 Patent col. 2:4- 12; '762 Patent col. 3:13- 19; '762 Patent col. 4:49- 57; '762 Patent col. 5:10- 17; '762 Patent col. 6:9- 19; '762 Patent col. 6:51- 7:2; '762 Patent col. 10:57- 64; '762 Patent col. 10:64- 66; '762 Patent col. 11:35- 44; '762 Patent col. 11:48-54; '762 Patent col. 11:55-67; '762 Patent col. 12:1-17; '762 Patent col. 12:18-31; '762 Patent col. 12:61-65; '762 Patent col.	DICTIONARY/TREATISE DEFINITIONS: <i>Prentice Hall's Illustrated Dictionary of Computing</i>, 3rd ed., 1998 [RVNF00003969, 70]. INTRINSIC EVIDENCE: '762 patent specification: col. 1:29-37, 1:45-2:45, 4:10-29, 4:49-5:44, 5:63-6:8, 6:22-6:37, 6:51-7:49, 7:66-8:32, 9:10-9:27, 10:46-56, 14:10-14:24, 12:32- 65, 15:42-54, 16:62-17:65, 18:16-32, 18:55-20:59, 19:34- 46, 21:12-26, 21:60-22:11, 23:30-60, and all figures referenced therein; Abstract; FIGS. 1-24 and accompanying text; Claims 1-17; Provisional application 60/097538 at *1; Reply to Office Action at 3 (Nov. 25, 2002). '709 patent specification: col. 1:8-42, 1:29, 2:4, 1:57-2:3, 4:49-5:13, 7:59-8:44, 10:40- 12:32, 12:50-66, 13:1-5, 13:16- 27, 13:27-56, 14:16-30, 15:48- 16:15, 16:41-18:39, 18:62- 20:23, 20:39- 65, 21:26-35, 22:10-19 and all figures referenced therein; Abstract; FIGS. 6, 7, 8a-c, 11, 16a-c, 18, 19, & 20a-20c and accompanying text; Claims 1- 24; Provisional Application 60/097538 at *1.

³ Because the '709 Patent and '762 Patent share a common specification, unless otherwise noted, Netflix has only cited to the relevant portions of '762 Patent for the sake of simplicity.

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929	13:23-26; '762 Patent col. 13:52-56; '762 Patent col. 14:7-10; '762 Patent col. 16:62-67; '762 Patent col. 17:37-41; '762 Patent col. 17:66-18:31; '762 Patent col. 20:39-56; '762 Patent col. 21:18-27; '762 Patent col. 22:3-9; '762 Patent col. 22:63-23:5; '762 Patent figs. 1-24; Provisional application 60/097538 at *1; U.S. Patent App. No. 09/357,941 Title; U.S. Patent App. No. 09/357,941 Abstract; U.S. Patent App. No. 09/357,941 at 1:9-2:2; U.S. Patent App. No. 09/357,941 at 5:14-15; U.S. Patent App. No. 09/357,941 at 9:32-10:7; U.S. Patent App. No. 09/357,941 at 21:10-14; U.S. Patent App. No. 09/357,941 at 21:21-23; U.S. Patent App. No. 09/357,941 at 26:11-27:3; U.S. Patent App. No. 09/357,941 at 28:9-20; U.S. Patent App. No. 09/357,941 at 30:19-23; U.S. Patent App. No. 09/357,941 at 37:29-32; U.S. Patent App. No. 09/357,941 at 40:22-29; U.S. Patent App. No. 09/357,941 at 60:14-17; U.S. Patent App. No. 09/357,941 at 65:5-10; U.S. Patent App. No. 09/357,941 at 69:25-29; U.S. Patent App. No. 09/357,941 at 78:8-15; U.S. Patent App. No. 09/357,941 figs. 1-108; U.S. Patent App. No. 09/034,934 Title; U.S. Patent App. No. 09/034,934 Abstract; U.S.	U.S. Patent App. No. 09/357,941 at 11:16-15:1 and all figures referenced therein; FIGS. 1-108 and accompanying text; Claims 1-81; U.S. Patent App. No. 09/139,777 at 2:1-28, 7:8-24; FIGS. 1-5 and accompanying text; Claims 1-17; U.S. Patent App. No. 09/349,939, at 17:27-18:19, 22:8-23:11, 23:26-26:9 and all figures referenced therein; FIGS. 1-29 and accompanying text; Claims 1-122; U.S. Patent App. No. 09/330,792 at: 1:20-3:17, 17:3-17:16 and accompanying figures; Claims 1-254; U.S. Patent App. No. 09/034,934 at: 3:15-5:2, 8:24-9:9, 13:9-17:15, 26:14-30:3; FIGS. 1-32 and accompanying text; Claims 1-180. EXTRINSIC EVIDENCE: In <i>Certain Products Containing Interactive Program Guide And Parental Control Technology</i> (337-TA-845), Confidential ID at 32-34, 94-95 (June 10, 2013) and final determination adopting same.

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
	Patent App. No. 09/034,934 at 1:4-13; U.S. Patent App. No. 09/034,934 at 2:2-12; U.S. Patent App. No. 09/034,934 at 2:18-29; U.S. Patent App. No. 09/034,934 at 4:5-13; U.S. Patent App. No. 09/034,934 at 9:15-30; U.S. Patent App. No. 09/034,934 at 12:19-29; U.S. Patent App. No. 09/034,934 at 9:15-30; U.S. Patent App. No. 09/034,934 at 13:9-13; U.S. Patent App. No. 09/034,934 at 17:23-29; U.S. Patent App. No. 09/034,934 at 18:20-19:8; U.S. Patent App. No. 09/034,934 at 19:3-8; U.S. Patent App. No. 09/034,934 at 19:20-23; U.S. Patent App. No. 09/034,934 at 20:1-6; U.S. Patent App. No. 09/034,934 at 20:19-23; U.S. Patent App. No. 09/034,934 at 25:24-26; U.S. Patent App. No. 09/034,934 at 26:14-24; U.S. Patent App. No. 09/034,934 at 28:14-18; U.S. Patent App. No. 09/034,934 at 32:1-5; U.S. Patent App. No. 09/034,934 figs. 1-32; U.S. Patent App. No. 09/034,934 Claim 22; U.S. Patent App. No. 09/332,244 Title; U.S. Patent App. No. 09/332,244 Abstract; U.S. Patent App. No. 09/332,244 at 3:20-28; U.S. Patent App. No. 09/332,244 at 12:23-13:10; U.S. Patent App. No. 09/332,244 at 43:1-12; U.S. Patent App. No. 09/332,244 at 46:6-10; U.S. Patent App. No. 09/332,244 figs. 1-31; U.S. Patent App. No.	

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929	09/139,777 Title; U.S. Patent App. No. 09/139,777 Abstract; U.S. Patent App. No. 9/139,777 at 2:1-7; U.S. Patent App. No. 09/139,777 at 7:8- 12; U.S. Patent App. No. 9/139,777 figs. 1-5; U.S. Patent App. No. 09/034,939 Title; U.S. Patent App. No. 09/034,939 Abstract; U.S. Patent App. No. 9/034,939 at 17:27-18:7; U.S. Patent App. No. 09/034,939 at 22:2-23; U.S. Patent App. No. 09/330,792 Title; U.S. Patent App. No. 9/330,792 Abstract; U.S. Patent App. No. 09/330,792 at 7:2-6; U.S. Patent App. No. 9/330,792 at 10:30-11:10; U.S. Patent App. No. 09/330,792 at 15:3-32; U.S. Patent App. No. 09/330,792 figs. 1-17; Prosecution History of '762 Patent, November 25, 2002 Reply to Office Action at pgs. 2-3; Prosecution History of '762 Patent, July 25, 2003 Preliminary Amendment Remarks at pgs. 8-9, 11; Prosecution History of '762 Patent, August 19, 2004 Reply to Office Action at pg. 26; '709 Patent claims 1-3, 7-9, 14, 18, 22, 24. EXTRINSIC EVIDENCE: <i>United Video Properties, Inc. v. Amazon.com, Inc.</i>, 561 F. App'x. 914, 915-19 (Fed. Cir. 2014) [NETFLIXNDCAL00024481-84]; <i>United Video Properties,</i>	

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
	<i>Inc. v. Amazon.com, Inc.</i>, No. 11-003-RGA, 2012 WL 2370318 (D. De. 2014); <i>United Video Properties, Inc. v. Amazon.com, Inc.</i>, No. CIV. A. 11-003-RGA, 2012 WL 2370318, at *4-5, *13 (D. Del. June 22, 2012) <i>aff'd</i>, 561 F. App'x 914 (Fed. Cir. 2014) [NETFLIXNDCAL00024488-89, NETFLIXNDCAL00024498-99]; Plaintiffs' Reply Claim Construction Brief, No. CIV. A. 11-003-RGA, Dkt. 92 at 12 (D. Del. April 9, 2012) [NETFLIXNDCAL00024517].	
determining from a program listing database a set of programs not yet watched; applying the at least one of the associated program criteria to the set of programs not yet watched to generate at least one personal viewing recommendation Found in claim numbers: '709 Patent: 13 processing circuitry operative (1) to determine at least one of the associated program criteria from the first database that meets the user preference profile, (2) to determine from the second database a set of programs not yet watched by the user at	determining from a program listing database a set of programs not yet watched; applying the at least one of the associated program criteria to the set of programs not yet watched to generate at least one personal viewing recommendation PROPOSED CONSTRUCTION: the "determining from a program listing database a set of programs not yet watched" method step must be performed prior to the "applying the at least one of the associated program criteria to the set of programs not yet watched to generate at least one personal viewing recommendation" method step	determining from a program listing database a set of programs not yet watched; applying the at least one of the associated program criteria to the set of programs not yet watched to generate at least one personal viewing recommendation PROPOSED CONSTRUCTION: No specific order required

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
the interactive program guide client, (3) to apply the at least one of the associated program criteria to the set of programs not yet watched to generate at least one personal viewing recommendation; and (4) to provide the personal viewing recommendation to the user at the interactive program guide client over the communications path Found in claim numbers: '709 Patent: 17	processing circuitry operative . . . (2) to determine from the second database a set of programs not yet watched by the user at the interactive program guide client, (3) to apply the at least one of the associated program criteria to the set of programs not yet watched to generate at least one personal viewing recommendation; . . . PROPOSED CONSTRUCTION: the processing circuitry must be operative "to determine from the second database a set of programs not yet watched by the user at the interactive program guide client" before it applies "the at least one of the associated program criteria to the set of programs not yet watched to generate at least one personal viewing recommendation" or, in the alternative, indefinite under <i>IPXL Holdings, L.L.C. v. Amazon.com, Inc.</i>, 430 F.3d 1377, 1384 (Fed. Cir. 2005) DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '709 Patent Title; '709 Patent Abstract; '709 Patent col. 1:16-49; '709 Patent Abstract; '709 Patent col. 20:26-33; '709 Patent figs. 1-24; '709 Patent	processing circuitry operative . . . (2) to determine from the second database a set of programs not yet watched by the user at the interactive program guide client, (3) to apply the at least one of the associated program criteria to the set of programs not yet watched to generate at least one personal viewing recommendation; . . . PROPOSED CONSTRUCTION: No specific order required and not indefinite DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '709 patent specification: col. 2:12-24, 2:55-67, 9:37-47, 10:47-63, 19:41-20:3, 20:24-38, 21:20-35, and all figures referenced therein; Abstract; FIGS. 1, 2a-2c, 3, 4, 15, 16a-16c, 18, 19, 20a-20c, 21-24 and accompanying text; Claim 1-24; Provisional application 60/097538 at *1. EXTRINSIC EVIDENCE: In <i>Certain Products Containing Interactive Program Guide And Parental Control Technology</i> (337-TA-845), Confidential ID at 26-31 (June 10, 2013).

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
	claims 13, 17. EXTRINSIC EVIDENCE: (Public) Commission Opinion, Certain Products Containing Interactive Program Guide and Parental Controls Technology, Inv. No. 337-TA-845 Slip Op. at 19-22 (December 11, 2013 USITC) [NETFLIXNDCAL00024589- 92];	
determining at least one of the associated program criteria from the viewing history database that meets a user preference profile [or] the interactive program guide client is operative to provide the user with an opportunity to create a user preference profile [or] a communications path over which the user preference profile is provided by the interactive program guide client [or] user preference profile Found in claim numbers: '709 Patent: 13, 16, 17, 20	user preference profile PROPOSED CONSTRUCTION: set of user- defined preferences for program criteria DICTIONARY/TREATISE DEFINITIONS: European Telecommunications Standards Institute (ETSI), TR 101 288 v.1.2.1, "Television systems; Code of practice for an Electronic Programme Guide (EPG)," at 7-8 [NETFLIXDNCAL00009536- 37], 10 [NETFLIXDNCAL00009539], 19-20 [NETFLIXDNCAL00009548- 49], 51-53 [NETFLIXDNCAL00009580- 82]. INTRINSIC EVIDENCE: '709 Patent Title; '709 Patent Abstract; '709 Patent col. 2:28- 32; '709 Patent col. 3:41- 56; '709 Patent col. 14:17-	user preference profile PROPOSED CONSTRUCTION: Criteria relating to user interest or disinterest in programs and/or program attributes DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '709 specification: col. 2:25-67, 6:17-29, 10:64-11:9, 12:39-13:23, 14:17-15:59, 17:1- 10, 17:61-18:5, 18:39-61, 19:18- 40, 20:4-65, 21:3-47, 24:1-12 and all figures referenced therein; Abstract; FIGS. 5, 9a- 9c, 13a-13f, 15, 16a-16c, 17a- 17b, 21, 24 and accompanying text; Claims 1-24; U.S. Patent 7,185,355 at: col. 1:60-2:47, 5:60-6:13, 6:30-7:54, 8:15-56, 9:23-50, 10:18-11:32, 15:3- 16:13, Abstract, FIGS. 2a-2b, 3, 5-8, 10, 11, 14-17 and accompanying text; Claims 1- 348.

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929	30; '709 Patent col. 14:31-34; '709 Patent col. 14:36-43; '709 Patent col. 14:53-15:4; '709 Patent col. 15:5-20; '709 Patent col. 15:21-34; '709 Patent col. 15:60-16:67; '709 Patent col. 20:31-33; '709 Patent col. 20:39-50; '709 Patent col. 21:7-15; '709 Patent figs. 1-24; U.S. Patent App. No. 09/034,934 Title; U.S. Patent App. No. 09/034,934 Abstract; U.S. Patent App. No. 09/034,934 at 3:11-14; 3:21-29; U.S. Patent App. No. 09/034,934 at 5:7-14; U.S. Patent App. No. 09/034,934 at 5:24-28; U.S. Patent App. No. 09/034,934 at 6:4-7; U.S. Patent App. No. 09/034,934 at 12:26-29; U.S. Patent App. No. 09/034,934 at 12:30-13:8; U.S. Patent App. No. 09/034,934 at 13:26-16:16; U.S. Patent App. No. 09/034,934 at 16:26-17:15; U.S. Patent App. No. 09/034,934 at 18:5-17; U.S. Patent App. No. 09/034,934 at 24:25-27; U.S. Patent App. No. 09/034,934 figs. 1-32. EXTRINSIC EVIDENCE: N/A	EXTRINSIC EVIDENCE: <i>In Certain Products Containing Interactive Program Guide And Parental Control Technology</i> (337-TA-845), Confidential ID at 31-32 (June 10, 2013) and final determination adopting same.
a first database comprising program listings and associated program criteria based on the user's viewing history at the interactive program guide client	a first database comprising program listings and associated program criteria based on the user's viewing history at the interactive program guide client	a first database comprising program listings and associated program criteria based on the user's viewing history at the interactive program guide client

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
Found in claim numbers: '709 Patent: 17	PROPOSED CONSTRUCTION: Plain and ordinary meaning⁴ DICTIONARY/TREATISE DEFINITIONS: European Telecommunications Standards Institute (ETSI), TR 101 288 v.1.2.1, "Television systems; Code of practice for an Electronic Programme Guide (EPG)," at 8 [NETFLIXDNCAL00009537], 11-12 [NETFLIXDNCAL00009540- 41], 14-20 [NETFLIXDNCAL00009543- 49]. INTRINSIC EVIDENCE: '709 Patent Title; '709 Patent Abstract; '709 Patent col. 6:17- 29; '709 Patent figs. 1-24; '709 Patent claims 13, 14, 17, 18; U.S. Patent App. No. 9/330,792 Title; U.S. Patent App. No. 09/330,792 Abstract; U.S. Patent App. No. 9/330,792 at 14:11-17; U.S. Patent App. No.	PROPOSED CONSTRUCTION: Plain and ordinary meaning, or in the alternative, "a first database comprising program listings and associated program criteria based on the user's activity from the interactive program guide client"⁵ DICTIONARY/TREATISE DEFINITIONS: <i>The New IEEE Standard Dictionary of Electrical and Electronics Terms</i> (IEEE 1993) at 304 [RVNF00003948-50]; <i>Newton's Telecom Dictionary</i> (Harry Newton 1999) at 222 [RVNF00003944-46]; <i>Webster's II New College Dictionary</i> (1999) at 92, 288, 1231 [RVNF00003978-80, 82, 84]; <i>The Merriam-Webster Dictionary</i> (1998) at 132 [RVNF00003972-74]; <i>The IEEE Standard Dictionary of the Electrical and Electronics Terms</i> (IEEE 1996) at 251 [RVNF00003959-60]; <i>The</i>

⁴ Statement by Netflix: While both Parties agree that this term should be construed according to its plain and ordinary meaning, Rovi (who proposed the term for construction) has refused to withdraw this term unless Netflix agrees to adopt Rovi's proposed interpretation of plain and ordinary meaning.

⁵ Statement by Rovi: Netflix previously proposed the term "a first database comprising program listings and associated program criteria based on the user's viewing history at the interactive program guide client," require "the user's viewing history" to be stored at "the interactive program guide client." Rovi proposes this term be afforded its plain and ordinary meaning where "the user's viewing history at the interactive program guide client" portion means "the user's activity from the interactive program guide client." While Netflix now proposes the term should be afforded its plain and ordinary meaning, the parties appear to disagree on the plain and ordinary meaning of this term since Netflix appears to believe this term requires storing the user's viewing history at the interactive program guide client. As a result, Rovi believes construction of this term is necessary since the parties dispute the plain and ordinary meaning of this term.

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
	09/330,792 figs. 1-17. EXTRINSIC EVIDENCE: N/A	<i>Authoritative Dictionary of IEEE Standards (IEEE 2000) at 268 [RVNF00003963-65].</i> INTRINSIC EVIDENCE: '709 patent specification: col. 2:22-24, 6:25-27, 19:41-48, 21:25-35, 22:11-17, 23:24-26, 23:57-61, 24:1-3, and all figures referenced therein; Abstract; FIGS. 1, 2a-2c, 3, 4, 15, 16a-16c, 18, 19, 20a-20c, 21-24, and accompanying text; Claims 1-24; Provisional Application 60/097538 at *1. EXTRINSIC EVIDENCE: N/A
combining at least a subset of the identified simple categories associated with the at least one program listing into the at least one combination category, wherein the combination category comprises more than one of the identified simple categories [or] combination category Found in claim numbers: '929 Patent: 11, 12, 17, 19	combination category PROPOSED CONSTRUCTION: a programming category that is composed of multiple simple categories, such as comedy-movies, comedy-series, sports-baseball, or sports-comedy DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '929 Patent Title; '929 Patent Abstract; '929 Patent col. 1:16-21; '929 Patent col. 1:29-30; '929 Patent col. 2:18-24; '929 Patent col. 2:44-54; '929 Patent col. 6:59-8:16; '929 Patent figs. 1-12; '929 Patent claims 1-20; Prosecution History of '929 Patent, Jan. 10, 2011 Notice of	combination category PROPOSED CONSTRUCTION: a programming category composed of multiple simple categories DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '929 patent specification: col. 2:37-61; 7:12-34; 7:52-9:47, 10:40-59, 12:32-41 and all figures referenced therein; Abstract; FIGS. 1, 2, 4, 3a-3c, 10 and accompanying text; Claims 1-20; Provisional Application 60/106,855 at *1; U.S. Patent 7,873,973 Title & Abstract; Claims 1-22; U.S. Patent 7,603,685 Title, Abstract, & Claims 1-61; U.S. Patent

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
	Allowance & Detailed Office Action <i>passim</i>; Provisional Application No. 60/106,855 <i>passim</i>, filed on Nov. 3, 1998; U.S. Patent No. 7,873,973 B2 ("the '973 Patent") Title & Abstract; claims 1-22; U.S. Patent No. 7,603,685 B2 ("the '685 Patent") Title & Abstract; claims 1-61; U.S. Patent No. US 8,381,248 B2 ("the '248 Patent") 13 Title & Abstract; claims 1-20; U.S. Patent No. US 8,572,654 B2 ("the '654 Patent") Title & Abstract; claims 1-34; U.S. Patent No. US 8,904,439 ("the '439 Patent") Title & Abstract; claims 1-40. EXTRINSIC EVIDENCE: N/A	8,381,248 Title, Abstract, & Claims 1-20; U.S. Patent 8,572,654 Title, Abstract, & Claims 1-34; U.S. Patent 8,904,439 Title, Abstract, & Claims 1-40; U.S. Patent Application 09/410,332 Title, Abstract, & Claims 1-61. EXTRINSIC EVIDENCE: N/A
a receiver that receives a plurality of program listings [or] receiver Found in claim numbers: '929 Patent: 11	receiver PROPOSED CONSTRUCTION: circuitry in user equipment for receiving television signals DICTIONARY/TREATISE DEFINITIONS: European Telecommunications Standards Institute, TR 101 288 v.1.2.1, "Television systems; Code of practice for an Electronic Programme Guide (EPG), at 6 [NETFLIXNDCAL00009535], 10-13 [NETFLIXNDCAL00009539-42] (1997); McGraw-Hill Dictionary of Scientific and Technical Terms at 1661	receiver PROPOSED CONSTRUCTION: Plain and ordinary meaning or, if a definition is needed, "a device or component of a device that receives" DICTIONARY/TREATISE DEFINITIONS: <i>Newton's Telecom Dictionary</i> (Harry Newton 1999) at 654 [RVNF00003944, 45, 47]; <i>Webster's Ninth New Collegiate Dictionary</i> (Merriam-Webster 1990) at 982 [RVNF00003952, 53, 55]; <i>Webster's II New College Dictionary</i> (1999) at 925 [RVNF00003978, 79, 83];

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929	[NETFLIXNDCAL00024570] (Sybil B. Parker at al. ed., 5th ed. 1994); The Broadcast Communications Dictionary at 180 [NETFLIXNDCAL00024566] (Lincoln Diamante ed., 3d ed., rev. 1989). INTRINSIC EVIDENCE: '929 Patent Title; '929 Patent Abstract; '929 Patent col. 1:16- 21; '929 Patent col. 1:29- 30; '929 Patent col. 2:28- 38; '929 Patent col. 4:34- 6:58; '929 Patent col. 10:63- 69; '929 Patent figs. 1-12; '929 Patent claims 1-20; Prosecution History of '929 Patent, Jan. 10, 2011 Notice of Allowance & Detailed Office Action <i>passim</i>; Provisional Application No. 60/106,855 <i>passim</i>, filed on Nov. 3, 1998; U.S. Patent No. 7,873,973 B2 ("the '973 Patent") Title & Abstract; claims 1-22; U.S. Patent No. 7,603,685 B2 ("the '685 Patent") 2 Title & Abstract; claims 1-61; U.S. Patent No. US 8,381,248 B2 ("the '248 Patent") Title & Abstract; claims 1-20; U.S. Patent No. US 8,572,654 B2 ("the '654 Patent") Title & Abstract; claims 1-34; U.S. Patent No. US 8,904,439 ("the '439 Patent") Title & Abstract; claims 1-40. EXTRINSIC EVIDENCE:	<i>The Merriam-Webster Dictionary</i> (1998) at 436 [RVNF00003972, 73, 76]. INTRINSIC EVIDENCE: '929 patent specification: col. 2:28- 37; 4:22-6:22 and all figures referenced therein; Abstract; Provisional Application 60/106855 at *1; FIGS. 1, 2, 6, 7a, 8 and 12 and accompanying text; Claims 1-20. EXTRINSIC EVIDENCE: <i>Noah Systems, Inc. v. Intuit Inc.</i>, No. 2-10-cv-01420, Dkt. 40 (W.D. PA Oct. 26, 2011).

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
	<i>Broad. Innovation v. Echostar Communs. Corp.</i> , 240 F. Supp. 2d 1127, 1153 (D. Colo. 2003) [NETFLIXNDCAL00024553- 54]; <i>United Video Properties, Inc. v. Amazon.com, Inc.</i> , No. CIV. A. 11-003-RGA, 2012 WL 2370318, at *7-8 (D. Del. June 22, 2012) <i>aff'd</i> , 561 F. App'x 914 (Fed. Cir. 2014) [NETFLIXNDCAL00024491- 92].	
providing a search engine application [or] receiving one or more characters in said search engine application [or] matching said characters using said search engine application to one or more database entries [or] search engine application Found in claim numbers: '962 Patent: 1, 14, 27	search engine application PROPOSED CONSTRUCTION: search engine application for a video recorder DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '962 Patent Title; '962 Patent Abstract; '962 Patent col. 1:16-19; '962 Patent col. 1:21-28; '962 Patent col. 1:66-2:1; '962 Patent col. 2:8-15; '962 Patent col. 3:3-4; '962 Patent col. 3:54-4:12; '962 Patent col. 4:49-58; '962 Patent col. 4:65-5:36; '962 Patent col. 5:43-50; '962 Patent col. 5:51-52; '962 Patent col. 5:61-67; '962 Patent col. 6:1-6; '962 Patent col. 6:12-13; '962 Patent col. 6:26-29; '962 Patent col. 6:66-7:7; '962 Patent col. 7:29-36; '962 Patent col. 8:2-5; '962 Patent col. 8:31-34; '962 Patent col. 11:10-17; '962 Patent col.	search engine application PROPOSED CONSTRUCTION: Hardware, software, and/or firmware, which receives search requests and interfaces with one or more databases to respond to search requests DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '962 patent specification: col. 2:15-28, 2:29-35, 2:49-61, 5:37-50; 6:1-7:44; 8:31-45, 9:13-10:32 and all figures referenced therein; Abstract; FIGS. 8-20, 22 and accompanying text; Claims 1-27. EXTRINSIC EVIDENCE: N/A

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
	11:50-60; '962 Patent figs 1-22; '962 Patent claims 1, 14, 20-22, 27. EXTRINSIC EVIDENCE: N/A	
wherein said results comprise one or more show listings and one or more selectable categories of shows [or] selectable categories of shows Found in claim numbers: '962 Patent: 1, 14, 27	selectable categories of shows PROPOSED CONSTRUCTION: groupings created from database entries in response to a user's search DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '962 Patent col. 2:36-49; '962 Patent col. 2:59-61; '962 Patent col. 9:30-34; '962 Patent col. 9:43-56; '962 Patent col. 10:3-9; '962 Patent col. 10:10-18; '962 Patent col. 10:56-11:5; '962 Patent figs. 11-13, 17-19, 21; '962 Patent claims 1, 14, 27; '962 Patent Prosecution History, 4/7/2008 Reply to Office Action at 2-9, 12-15; '962 Patent Prosecution History, 11/14/2008 Reply to Office Action at 2-3; '962 Patent Prosecution History, 6/24/2009 Reply to Office Action at 2-6, 8-11; '962 Patent Prosecution History, 4/8/2010 Reply to Office Action at 7-8; '962 Patent Prosecution History, 12/22/2010 Reply to Office Action at 2-5; '962 Patent Prosecution History, 3/16/2011 Notice of Allowance at 2.	selectable categories of shows PROPOSED CONSTRUCTION: Plain and ordinary meaning or, if a definition is needed, "categories of shows that a user may select" DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '962 patent specification: col. 2:36-48, 9:30-10:32, 10:56-11:5 and all figures referenced therein; Abstract; FIGS. 8-20, 22 and accompanying text; Claims 1-27; Amendment After Final (April 7, 2008); Reply Accompanying a Request for Continued Examination (Nov. 14, 2008); Reply Accompanying a Request for Continued Examination (April 8, 2010); Amendment After Final (Dec. 10, 2010). EXTRINSIC EVIDENCE: See e.g., <i>SanDisk Corp. v. Kingston Tech. Co.</i>, 695 F.3d 1348 (Fed. Cir. 2012)

1	Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
2	U.S. Patent Nos. 7,103,906, 3 7,974,962, 6,898,762, 4 7,065,709, 7,945,929		
5		EXTRINSIC EVIDENCE: N/A	
6	delivering the media to a [first/second] client device	client device	client device
7	[or]	PROPOSED	PROPOSED
8	identified device properties	CONSTRUCTION: Plain and	CONSTRUCTION: Plain and
9	of said [first/second] client	ordinary meaning ⁶	ordinary meaning or, if a
10	device	DICTIONARY/TREATISE	definition is needed, "device
11	[or]	DEFINITIONS: N/A	that has the capability to receive
12	a [first/second] format	INTRINSIC EVIDENCE: '906	media from a network" ⁷
13	compatible with said	Patent Title; '906 Patent	
14	[first/second] client device	Abstract; '906 Patent figs 1, 3,	INTRINSIC EVIDENCE:
15	[or]	6; '906 Patent at col. 5:53-	'906 patent specification: col.
16	client device	67; '906 Patent at col. 10:4-21.	2:5-15, 5:19-29, 5:53-6:7 and
17	Found in claim numbers:	EXTRINSIC EVIDENCE: N/A	all figures referenced therein;
18	'906 Patent: 1, 2, 3, 6, 8,		Abstract; FIGS. 1-3, 5, 6, and
19	10, 11		accompanying text; Claims 1-
20	associated with [a/said]	user	11.
21	first user	PROPOSED	EXTRINSIC EVIDENCE: N/A
22	[or]	CONSTRUCTION: Plain and	
23		ordinary meaning ⁸	PROPOSED
24			CONSTRUCTION: plain and
25			ordinary meaning or, if a

⁶ Statement by Netflix: While both Parties agree that this term should be construed according to its plain and ordinary meaning, Rovi (who proposed the term for construction) has refused to withdraw this term unless Netflix agrees to adopt Rovi's proposed interpretation of plain and ordinary meaning.

⁷ Statement by Rovi: Netflix previously proposed the term "client device" mean "device other than a server." Rovi proposes the term "client device" should be afforded its plain and ordinary meaning, which is "device that has the capability to receive media from a network." While Netflix now proposes the term "client device" should be afforded its plain and ordinary meaning, the parties appear to disagree on the plain and ordinary meaning of this term since Netflix appears to believe this term is limited to a "device other than a server." As a result, Rovi believes construction of the term "client device" is necessary since the parties dispute the plain and ordinary meaning of this term.

⁸ Statement by Netflix: While both Parties agree that this term should be construed according to its plain and ordinary meaning, Rovi (who proposed the term for construction) has refused to withdraw this term unless Netflix agrees to

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		
user Found in claim numbers: '906 Patent: 1, 10	DICTIONARY/TREATISE DEFINITIONS: N/A INTRINSIC EVIDENCE: '906 Patent Title; '906 Patent Abstract; '906 Patent at col. 1:40-43; '906 Patent at col. 1:50-53; '906 Patent at col. 2:5- 20; '906 Patent at col. 5:19-20. EXTRINSIC EVIDENCE: N/A	definition is needed, "one or more users"⁹ DICTIONARY/TREATISE DEFINITIONS: <i>The New IEEE Standard Dictionary of Electrical and Electronics Terms</i> (IEEE 1993) at 1444 [RVNF00003948, 49, 51]; <i>Webster's Ninth New Collegiate Dictionary</i> (Merriam-Webster 1990) at 1299 [RVNF00003952, 53, 56]; <i>The IEEE Standard Dictionary of the Electrical and Electronics Terms</i> (IEEE 1996) at 1169 [RVNF00003959, 62]; <i>The Authoritative Dictionary of IEEE Standards</i> (IEEE 2000) at 1241 [RVNF00003963, 64, 68]; <i>Webster's II New College Dictionary</i> (1999) at 1215 [RVNF00003978, 79, 84]; <i>The Merriam-Webster Dictionary</i> (1998) at 575 [RVNF00003972, 73, 77]. INTRINSIC EVIDENCE: '906 patent specification: col. 2:5-37, 5:19-52, 6:60-7:7, 8:13- 26, and all figures referenced therein; Abstract; FIGS. 1, 3, 6, and accompanying text; Claims 1-11; Non-final Rejection (Jan.

adopt Rovi's proposed interpretation of plain and ordinary meaning.

⁹ Statement by Rovi: Netflix previously proposed the term "user" mean "individual who uses the [first/second] client device." Rovi proposes the term "user" should be afforded its plain and ordinary meaning, which is "one or more users." While Netflix now proposes the term "user" should be afforded its plain and ordinary meaning, the parties appear to disagree on the plain and ordinary meaning of this term since Netflix appears to believe this term is limited to an "individual who uses the [first/second] client device." As a result, Rovi believes construction of the term "user" is necessary since the parties dispute the plain and ordinary meaning of this term.

Claim Language (Disputed Terms in Bold)	Netflix's Proposed Construction and Evidence in Support	Rovi's Proposed Construction and Evidence in Support
U.S. Patent Nos. 7,103,906, 7,974,962, 6,898,762, 7,065,709, 7,945,929		20, 2004); Response to Non-final office Action (May 7, 2004); Final Rejection (July 22, 2004); Response to Final Rejection (Sept. 22, 2004); Response to Office Communication (March 9, 2005); Non-final Office Action (May 15, 2005); Response to Non-final Office Action (Aug. 12, 2005); Non-final Office Action (Oct. 25, 2005); Response to Non-final Office Action (Feb. 1, 2006); Inventor Disclosure (Sept. 17, 1999) [RVNF 00003026-38]. EXTRINSIC EVIDENCE: N/A

III. Most Significant Terms (Patent L.R. 4-3(c))

Pursuant to Patent L.R. 4-3(c), the Parties' proposed constructions of the ten disputed terms which the Parties deem most significant to the resolution of the case are provided in the chart in Section II.

Netflix has only proposed for construction what it contends are claim-dispositive terms, which are the following terms identified above: "program guide"/"program listing" ('709 and '762 patents); "determining from a program listing database . . ." / "processing circuitry operative . . . (2) to determine from the second database . . ." ('709 patent); "user preference profile" ('709 patent); "receiver" ('929 patent); "search engine application" ('962 patent); "selectable categories of shows" ('962 patent).

Rovi asserts that none of the ten terms identified above are claim dispositive.

IV. Anticipated Length of Hearing and Identification of Witnesses (P.L.R. 4-3(d) & (e))

1 The Parties estimate that no more than three hours will be required for the Claim Construction
2 Hearing. Neither Party intends to call any witnesses at the Claim Construction Hearing.

3
4 Dated: December, 19 2014

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

6
7 By: /s/ Amol A. Parikh

AMOL A. PARIKH

8 Attorneys for Defendants-Counterclaimants

9 ROVI CORPORATION, ROVI
10 TECHNOLOGIES CORPORATION,
11 ROVI GUIDES, INC. (F/K/A
12 GEMSTAR-TV GUIDE
INTERNATIONAL), and UNITED
VIDEO PROPERTIES, INC., and

13 Counterclaimants

14 APTIV DIGITAL, INC. and
STARSIGHT TELECAST, INC.

15
16 Dated: December 19, 2014

KEKER & VAN NEST LLP

17
18 By: /s/ Edward A. Bayley

ASHOK RAMANI
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20 Attorneys for Plaintiff, Counter-Defendant
21 and Counter-Claimant NETFLIX, INC.

SIGNATURE ATTESTATION

Pursuant to Civil L.R. 5.1, I hereby attest that I have obtained the concurrence in the filing of this document from all the signatories for whom a signature is indicated by a “conformed” signature (/s/) within this e-filed document and I have on file records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request.

Dated: December 19, 2014

MCDERMOTT WILL & EMERY LLP

/s/ Amol A. Parikh

By: AMOL A. PARIKH

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ROVI CORP., ROVI TECHNOLOGIES-
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DIGITAL, INC., and STARSIGHT
TELECAST, INC.

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