

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND/ODESSA DIVISION**

HEADWATER RESEARCH LLC,

*Plaintiff,*

v.

GOOGLE LLC,

*Defendant.*

**Case No. 7:25-cv-00231-DC-DTG**

**JURY TRIAL DEMANDED**

**ORAL ARGUMENT REQUESTED**

**GOOGLE'S OPENING CLAIM CONSTRUCTION BRIEF**

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**I. NOTE ON CITATIONS**

- The patents-in-suit, U.S. Patent Nos. 9,615,192 (“the ’192 patent”) and 10,321,320 (“the ’320 patent”) are attached as **Exhibits A and B**, respectively. References to the patents-in-suit are listed by column and line number, or by claim number.
- All citations to the specification cite only the ’192 patent, but the specifications are identical, and citations apply equally to both patents.
- References to claims in the patents-in-suit are cited by the shortened patent number followed by “cl.” and the claim number. For example, “’192 cl. 1” refers to claim 1 of the ’192 patent.
- “AC” refers to Headwater’s Amended Complaint filed in this action (Dkt. 28).
- “Webster’s New College Dictionary ” refers to *Webster’s New College Dictionary*, Third Ed. (2008), excerpts of which are attached as **Exhibit C**.

## II. INTRODUCTION

Google contends that the disputed claim terms are indefinite because the intrinsic evidence fails to provide a reasonably certain meaning to one of skill in the art. Patent applicants like Headwater “face powerful incentives to inject ambiguity into their claims” and “defer clarity at all costs,” so the law provides a “meaningful definiteness check” against those abuses. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014)) (quotation omitted). Thus, “a patent must describe the exact scope of an invention and its manufacture . . . to apprise the public of what is still open to them.” *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 373 (1996). Google notified Headwater why each disputed claim term was indefinite during a meet and confer, but Headwater refused to provide any clarification and simply proposed “plain and ordinary meanings” for all terms. Buscher Decl. ¶ 5. But “plain and ordinary” does not resolve the claims’ ambiguity and, to the extent Headwater believes no ambiguity exists, it was obligated to explain why during the parties’ meet and confer. By ignoring the indefiniteness of these terms, Headwater gives itself the opportunity to exploit the ambiguity in the claims to its advantage later in the case, which the Supreme Court warned against in *Nautilus*.

For the reasons stated below, the Court should find that these terms are indefinite.

## III. LEGAL STANDARD

### A. Claim Construction

The words of a patent claim are generally given their “ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). A patent also must “particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112, ¶ 2. To satisfy the definiteness requirement, a patent claim must “inform those skilled in the art about the scope of the invention with reasonable

certainty.” *Nautilus*, 572 U.S. at 910. “A patent must be precise enough to afford clear notice of what is claimed, thereby apprising the public of what is still open to them.” *Id.* at 909 (cleaned up). “Otherwise there would be a zone of uncertainty which enterprise and experimentation may enter only at the risk of infringement claims.” *Id.* at 909-10 (cleaned up).

Following *Nautilus*, the Federal Circuit has explained that the “claims, when read in light of the specification and the prosecution history, must provide objective boundaries for those of skill in the art.” *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014). The Federal Circuit has found objective boundaries lacking—and the claims indefinite—when the claims recite a “term of degree” but the specification “fails to provide sufficient notice of its scope.” *Id.* Objective boundaries are also lacking when the claims require a particular measurement, but the patent fails to explain how the measurement should be taken. *See Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 789 F.3d 1335, 1343-45 (Fed. Cir. 2015) (“molecular weight” was indefinite because it could be measured using different techniques, with potentially conflicting results, and the patent failed to provide guidance as to which technique should be used); *Dow Chem. Co. v. Nova Chems. Corp. (Can.)*, 803 F.3d 620, 633-35 (Fed. Cir. 2015) (“slope” was indefinite because the patent failed to explain how it should be measured). Merely being able to ascribe “some meaning” to a patent’s claims is insufficient to satisfy the definiteness requirement of 35 U.S.C. § 112. *Nautilus*, 572 U.S. at 911. Further, courts “should not rewrite claims to preserve validity.” *Pfizer, Inc. v. Ranbaxy Labs. Ltd.*, 457 F.3d 1284, 1292 (Fed. Cir. 2006).

#### **IV. DISPUTED TERMS**

##### **A. Subjective Terms**

“Language of degree, like the language at issue here, is indefinite unless, when read in light of the specification and the prosecution history, it provides objective boundaries for those of skill in the art.” *Akamai Techs., Inc. v. MediaPointe, Inc.*, 159 F.4th 1370, 1377 (Fed. Cir. 2025)

(internal citations and quotations omitted) (holding that claims using “optimal” or “best” were indefinite).

**1. “The Trigger is an Occurrence of an Asynchronous Event With Time-Critical Messaging Needs” (’192 cl. 1, 15; ’320 cl. 1)**

<b>Google’s Construction</b>	<b>Headwater’s Construction</b>
Indefinite	Plain and Ordinary Meaning

Claims 1 and 15 of the ’192 Patent and claim 1 of the ’320 Patent require “for at least one of the message delivery triggers, the trigger is an occurrence of *an asynchronous event with time-critical messaging needs.*” ’192 cl. 1, 15; ’320 cl. 1. The claims require “logic” to determine when the requisite trigger has occurred. ’192 cl. 1; ’320 cl. 1. But the ’192 and ’320 patents fail to provide reasonable certainty about what constitutes “an asynchronous event with time-critical messaging needs.” Neither the claims nor the specification provide a person of ordinary skill in the art (POSITA) with reasonable certainty as to the metes and bounds of what it means for some unspecified “asynchronous event” to have “time-critical messaging needs” so the term is indefinite and the asserted claims are invalid. *Nautilus*, 572 U.S. at 901. What makes an event “asynchronous” and which of these events are covered by the claims?

Moreover, the term uses the subjective term “time-critical.” When a subjective term is used in a claim, “a court must determine whether the patent’s specification supplies some standard for measuring the scope of the [term].” *Ernie Ball, Inc. v. Earvana, LLC*, 502 F. App’x 971, 980 (Fed. Cir. 2013) (citations omitted). Turning to the specification, both the ’192 and ’320 patents mention asynchronous events with “time critical service processor 115 (or service controller 112) messaging needs” at the end of a single sentence:

In some embodiments, the transmission trigger is based on waiting for an amount of service usage, and also including a minimum transmission rate that triggers a transmission according to one or more of the following parameters: a maximum time between transmissions clock to keep the

service processor 115 in communication with the service controller 122 when little or no service usage is occurring, a polling request of some kind from the service controller 122, a response to a service controller heartbeat, a transmission generated by a service verification error event, *or a transmission generated by some other asynchronous event with time critical service processor 115 (or service controller 122) messaging needs, such as a transaction or service billing event or a user request.*

'192 Patent 38:50-63. But this passage does not resolve the indefiniteness problem.

*First*, the passage refers to “time critical *service processor 115 (or service controller 122) messaging needs.*” So the “messaging needs” are from the perspective of a “service processor 115 (or service controller 122).” *Id.* The patent states that the service processor 115 conducts “data plane traffic policy implementation [] in the device 100” and the service controller 122 “manages services for both sets of devices.” '192 Patent 12:26-30, 12:65-67. The disputed claim term, however, fails to identify the component in the system that should have the “time-critical messaging needs” that would satisfy the claimed trigger. Schonfeld Decl. ¶ 35.

*Second*, even if the claims were limited to time critical service processor 115 (or service controller 122) messaging needs, the specification provides no objective framework for determining what amount of timeliness qualifies as “time-critical.” It only includes two examples, “a transaction or service billing event” or “a user request.” '192 Patent 38:50-63. Neither clarifies the term’s boundaries. These examples are themselves undefined and capacious. The patent says nothing specific about time requirements for transactions or service billing events. The term “user request” is even worse. The patent does not define who the “user” refers to (e.g., someone using a server, or someone using a mobile device), what a “user request” is, nor any objective time requirements for a user request that would qualify it as being “time critical” from the perspective of the service processor or controller. “A transaction or service billing event” can be a routine notification (e.g., your bill is due in two weeks) or a notification that requires immediate attention

(e.g., your message was not delivered because you have exceeded your allotted quota). Schonfeld Decl. ¶ 36. Some user requests could be trivial, like changing a display preference or a routine request from a server for logistical information. *Id.* Other user requests are urgent, like initiating an emergency call. *Id.* It is therefore not clear what type of “a transaction or service billing event” or “a user request” would be a time-critical messaging event. The two vague examples in the specification merely restate the ambiguity rather than resolve it. *Id.*

Further, both these examples fail to provide guidance to determine whether other events would be time critical for the *service processor or controller*. Neither example provides an indication of the temporal bounds that would qualify a messaging need as time critical. For example, does a “transaction” or “user request” that asks for a response from the *service processor or controller* in two hours in the future qualify as time critical? If so—as the specification states—then neither of these two examples provide the guidance to a POSITA as to whether other types of events would be time critical. Instead, by providing these two examples, the patentee concedes that there are different ways to qualify as time-critical. But, in cases like the one here, the Federal Circuit has “repeatedly said that when multiple methods for determining whether a claim limitation is met lead to different results without guidance as to which method should be used, the claim is indefinite.” *Akamai*, 159 F.4th at 1379.

Even if the disputed term used “time-critical” in the same way as the specification, the mere parroting of the subjective claim language in the specification is insufficient to provide a POSITA with objective boundaries. *See Datanet LLC v. Dropbox, Inc.*, No. 6:22-CV-001142-OLG-DTG, 2023 WL 7545234, at \*10 (W.D. Tex. Nov. 10, 2023) (“[T]he Court agrees with Dropbox that the passages Datanet cites either essentially repeat the claim language or simply recite that an impact should have ‘little or no perceptible impact on system performance’ . . . .

[These passages fail to] provide a POSITA guidance to determine what is a . . . ‘substantially imperceptible impact’ [as claimed].”) (citations omitted).

**Third**, the indefiniteness problem is compounded by the specification’s failure to identify any event that would **not** qualify as having “time-critical messaging needs.” Without a single non-example or countervailing illustration, a POSITA has no way to understand where the boundary lies between events that fall within the claim scope and those that fall outside it. Schonfeld Decl. ¶ 37. Courts have consistently found claims indefinite in analogous circumstances. In *Semcon IP Inc. v. Huawei Device USA Inc.*, the court held the term “relatively short messages” was indefinite since the patent did not provide objective guidance as to what was “short” but only contrasted it with “inordinately long.” No. 2:16-cv-00437, 2017 WL 2972193, at \*25 (E.D. Tex. 2017). Similarly, in *Versata Software, Inc. v. Zoho Corp.*, the court found a claim term “space-constrained display” was indefinite where the patent “provide[d] examples of when something constitutes a space-constrained display” but “fail[ed] to provide information about when something is not a space-constrained display.” 213 F. Supp. 3d 829, 836-37 (W.D. Tex. 2016). The same reasoning applies here: without any indication of what is not time-critical, a POSITA cannot ascertain the scope of what is a “time-critical” need.

**Finally**, the word “needs” creates additional ambiguity. The specification does not explain what consequences must flow from a failure to meet the purported timing requirement. A POSITA would have no way to know whether the “needs” are satisfied only when an application would crash, when data would be irrecoverably lost, when a transaction would time out, or when the user experience is simply degraded. Each of these interpretations implies a different scope, and nothing in the intrinsic record provides a basis for choosing among them. This ambiguity renders the term indefinite. *U.S. Well Services, LLC v. Liberty Energy, Inc.*, No. 4:24-CV-00839, 2025 WL

3500637 (S.D. Tex. May 30, 2025), *adopted* 2025 WL 1886007 (S.D. Tex. July 7, 2025); *Gardner v. Toyota Motor Corp.*, No. C 08-0632 RAJ, 2009 WL 4110305, at \*5 (W.D. Wash. Nov. 19, 2009) (“Here, while it is clear that the ‘said speed demands’ element relates to the cruise mode control feature, it is unclear how that definition results in a sufficiently defined scope for claim 6.”). For example, in *U.S. Well Services*, the court held that the term “high pressure” was indefinite where the specification failed to provide objective guidance for determining what qualified as “high.” 2025 WL 3500637, at \*5-9. The court observed that a given pressure value might be deemed “high” under one set of conditions but not under another, and without further guidance a POSITA could not know the term’s scope. *Id.* The term “needs” suffers from the identical defect: what qualifies as a need under one set of circumstances may not qualify under another, and the specification provides no framework for making that determination.

In sum, the term is indefinite because the intrinsic evidence fails to provide any objective standard for determining what qualifies as “time-critical,” identifies no component whose perspective governs the inquiry, offers only two undefined of examples of “time-critical needs” that restate rather than resolve the ambiguity, and provides no counter-examples to demarcate the claim’s boundaries. A POSITA cannot determine with reasonable certainty whether any given event falls within or outside the claim scope. Thus, the term is indefinite and the corresponding claims are invalid.

**2. “The Period of the Timer is Fractionally Shorter Than a Maximum Data Message Interval Beyond Which the Secure Message Link is Taken Down” (’192 cl. 10; ’320 cl. 4)**

<b>Google’s Construction</b>	<b>Headwater’s Construction</b>
Indefinite	Plain and Ordinary Meaning

Claim 10 of the ’192 Patent and claim 4 of the ’320 Patent requires “the period of the timer is **fractionally shorter** than a maximum data message interval beyond which the secure message

link is taken down.” Claim 4 of the ’320 Patent requires the same, but for “the Internet data message link to the given device.” Each term must be given meaning, so the term “fractionally shorter” must mean something more specific than “shorter.” *See, e.g., Bayer Pharma Aktiengesellschaft v. Mylan Pharms. Inc.*, 152 F.4th 1400, 1406 (Fed. Cir. 2025) (“Claims must be interpreted with an eye toward giving effect to all terms in the claim”); *accord Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1257 (Fed. Cir. 2010) (collecting cases holding that readings that render claim language “superfluous” or “meaningless” are disfavored). Yet neither the claims nor the specifications provide any baseline for what “shorter” means, much less “fractionally shorter.” *See, e.g., Liberty Ammunition, Inc. v. United States*, 835 F.3d 1388, 1395-96 (Fed. Cir. 2016) (finding that “reduced area of contact” is a term of degree because it “necessarily calls for a comparison against some baseline,” and noting that “[t]erms of degree are problematic if their baseline is unclear to those of ordinary skill in the art”); *Semcon IP*, 2017 WL 2972193, at \*25 (“relatively short messages” indefinite where the patent did not provide objective guidance as to what was “short”). Whether something is “fractionally shorter” is a subjective term of degree that could mean something different to a POSITA based on their particular experiences or opinions. Because neither the claims nor the specification provides a POSITA with reasonable certainty as to the metes and bounds of “fractionally shorter,” particularly with respect to the “maximum data message interval,” the term is indefinite and the asserted claims are invalid. *Nautilus*, 572 U.S. at 901.

Webster’s New College Dictionary defines fractional as “Very small: INSIGNIFICANT <fractional assistance only>.” The specification provides no guidance as to what a “very small” period of time would be to satisfy the claims. Schonfeld Decl. ¶ 41. Courts have repeatedly invalidated claims containing relative terms of degree where, as here, the specification fails to

supply objective guidance. In *In re Taasera Licensing LLC Patent Litigation*, the court found the term “substantially real time” was indefinite even though the same patent used “real time” elsewhere. 2023 WL 8628323, at \*20 (E.D. Tex. Dec. 13, 2023). The court explained that the use of both terms “suggests some difference in scope between ‘real time’ and ‘substantially real time,’ but [the patentee] points to nothing that explains where one ends and the other begins.” *Id.* Other courts have held similarly. *Knauf Insulation, LLC v. Johns Manville Corp.*, 772 F.Supp.3d 946, 1018-20 (S.D. Ind. 2024) (granting summary judgment that “slightly compress” in claims directed to a fiberglass insulation was indefinite where the specification did “not give any hint as to what the lower or upper boundaries are of ‘slight compression’”); *Versata Software*, 213 F. Supp. 3d at 836-37 (“space-constrained display” indefinite where the patent “fail[ed] to provide information about when something is not a space-constrained display”).

The same reasoning applies here: “fractionally shorter” necessarily implies something different from simply shorter than the “maximum data message interval” but the specification provides no objective guidance as to where the line falls. Schonfeld Decl. ¶¶ 41-42. The claim thus fails to provide reasonable certainty of value measured against this baseline. Such subjectivity renders these claims indefinite.

## **B. Lack of Antecedent Basis**

Five terms in the claim language are indefinite for lack of antecedent basis. *Nautilus*, 572 U.S. at 901. When the parties met and conferred, Headwater refused to identify how to fix the claim language to resolve the lack of antecedent basis. Buscher Decl. ¶ 5. For Headwater to now propose a solution would defeat the purpose of the meet and confer obligations required by the scheduling order and OGP.

### **1. “The Secure Message Link” (’320 cl. 1)**

Google’s Construction	Headwater’s Construction
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Indefinite for Lack of Antecedent Basis	Plain and Ordinary Meaning
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Claim 1 includes “the secure message link” using the definite article “the,” yet the claim fails to previously introduce “a secure message link” that could serve as the proper antecedent basis for this phrase. As shown below, the only other link that precedes “the secure message link” in claim 1 is “a respective secure Internet data message link”:

i) a network server system including

a link interface to maintain **a respective secure Internet data message link** between the link interface and a respective device link agent on each of a plurality of wireless end-user devices...

upon determining that one of the message delivery triggers has occurred for the given one of the wireless end-user devices, the logic further to supply one or more messages comprising the buffered content for the given one of the wireless end-user devices to the transport services stack for delivery on **the secure message link** maintained between the transport services stack and a device link agent on the given one of the wireless end-user devices...

'320, Cl. 1.

A POSITA reading this claim faces genuine, material ambiguities. Schonfeld Decl. ¶ 44. What is “the secure message link” and how does it differ from “the secure Internet data message link”? Given the lack of antecedent basis, does “the secure message link” refer back to the “secure Internet data message link,” or does it refer to a separate link? These questions cannot be resolved because the intrinsic record lacks any guidance. The phrase-in-dispute, “the secure message link,” appears only once in the claims and never appears in the specification. The preceding phrase, *i.e.*, the “secure internet data message link,” appears only once in the Abstract. *See* '320 patent. Thus, the specification provides no clarity. Within the claims, these two links (“the secure message link” and “a respective secure Internet data message link”) are connected to two facially different end points (“the transport services stack” and a “link interface,” respectively). Claim 1 teaches that “the secure message link [is] maintained between the **transport services stack** and a device link

agent.” The “transport services stack” is not described elsewhere in Claim 1 and, in particular, not in any context or interaction with a “secure Internet data message link.” The “secure Internet data message link,” on the other hand, is maintained “between the **link interface** and a respective device link agent.” See Claim 1 of the ’320 patent. Thus, claim 1 is indefinite because it could be interpreted two materially different ways—requiring one link or two different links—due to a lack of antecedent basis. *Media Rights Techs., Inc. v. Capital One Fin. Corp.*, 800 F.3d 1366, 1371 (Fed. Cir. 2015) (“Notably, a claim is indefinite if its language ‘might mean several different things and no informed and confident choice is available among the contending definitions.’” (quoting *Nautilus*, 572 U.S. at 911 n.8)).

In *Midwest Athletics and Sports Alliance LLC v. Xerox Corp.*, the court confronted an analogously problematic claim term. No. 6:19-CV-06036, 2020 WL 7692767 (W.D.N.Y. 2020). There, claim 1 referred first to “the module” and later to “the printing modules” without previously introducing either term with proper antecedent basis. *Id.* at \*17. The court held the claim indefinite because “a person of ordinary skill in the art would not be able to ascertain what the ‘particular, claimed modules are in the context of the claim language.’” *Id.* The *Midwest Athletics* court rejected the argument that a POSITA would simply understand the terms to be interchangeable. Rather, even where the specification used terms in ways that might suggest overlap, “nothing in the language of claim 1 identifie[d] what ‘the module’ means in context.” *Id.* The same problem exists here.

**2. “The Device Messaging Agent” (’192 cl. 7)**

<b>Google’s Construction</b>	<b>Headwater’s Construction</b>
Indefinite for Lack of Antecedent Basis	Plain and Ordinary Meaning

Claim 7 of the ’192 patent recites “**the device messaging agent** on at least one of the wireless end-user devices further to initiate the respective secure Internet data message link to the

transport services stack.” The use of the definite article “the” signals a reference back to a previously introduced claim element, yet neither claim 7, its parent claim 1, nor any other claims in the ’192 patent ever uses a “device messaging agent.” Claim 1 recites the term “device link agent.” This is further complicated because “device messaging agent” does not appear anywhere in the specification. Thus, this term should be found indefinite. Schonfeld Decl. ¶ 45.

### 3. “The Software Agents” (’320 cl. 1)

Google’s Construction	Headwater’s Construction
Indefinite for Lack of Antecedent Basis	Plain and Ordinary Meaning

Claim 1 requires “at least a first subset of the secure Internet data messages contain both a unique identifier for a corresponding one of **the software agents** and data to be consumed by that software component.” The term “the software agents” appears in claim 1 without proper antecedent basis. Claim 1 does not first recite “a software agent” before using this term. Thus, when the claims reference “the software agents,” there is no prior claim element to which this term refers. Schonfeld Decl. ¶ 47. Because it is not clear what agents have the corresponding “unique identifier,” the term is indefinite. *24/7 Customer, Inc. v. LivePerson, Inc.*, 235 F. Supp. 3d 1102, 1108 (N.D. Cal. 2016); *Illinois Comput. Rsch. LLC v. HarperCollins Publishers, Inc.*, 2012 WL 163801, \*10-11 (S.D.N.Y. 2012) (claim limitation reciting “displaying said images responsive to said requests” was indefinite for lack of an antecedent basis for “said request” where the court found it was ambiguous as to which actor was making the claimed request).

In *24/7 Customer*, the court found that the term “said interaction data” was indefinite where it lacked an antecedent basis and it was ambiguous as to what was the “interaction data.” 235 F. Supp. 3d at 1108. The defendant argued that the term was ambiguous because “‘data’ [was] used in different contexts within the claim and specification” such as “‘data relevant to a customer experience’ to ‘said data’ or to data that is processed ‘using one or more processing modules,

forming one or more insights.” *24/7 Customer, Inc. v. LivePerson, Inc.*, No. 4:15-cv-02897-JST, Dkt. 91, at 10 (N.D. Cal. Oct. 14, 2016). The court agreed with the defendant, finding that “the generic term ‘data’ is used in different contexts within the claim and specification,” making it “ambiguous whether these variations of ‘data’ are ‘equivalents, data subsets of each other, or completely different sets of data.’” *24/7 Customer*, 235 F. Supp. 3d at 1108.

Here, just like in *24/7 Customer*, “agents” appears in numerous different contexts with different modifiers throughout the specification, yet “software agents” is never used in the specification and it is unclear which agents claim 1 refers to when it identifies “the software agents.” Instead, the specification mentions agents like the policy control agent 1692, application interface agent 1693, access control integrity agent 1694, billing agent 1695, and service monitor agent 1696. ’192 Patent 47:4-8, 48:31-38, 48:60-64.

#### 4. “Those Software Applications” (’320 cl. 1)

Google’s Construction	Headwater’s Construction
Indefinite for Lack of Antecedent Basis	Plain and Ordinary Meaning

Claim 1 requires “messages with a unique identifier corresponding to a given one of **those software applications** to be securely delivered to a software process corresponding to the given software component.” The claims reference “those software applications” without establishing antecedent basis through prior introduction of “a software application.” Nowhere in the claims is this term first introduced with the indefinite article before being referenced. Schonfeld Decl. ¶ 48.

Because it is not clear which software applications have the corresponding “unique identifier,” the term is indefinite. *24/7 Customer*, 235 F. Supp. 3d at 1108; *Illinois Comput. Rsch. LLC*, 2012 WL 163801, \*10-11.

As was the case in *24/7 Customer* discussed above, the specification discusses various application types in different contexts, such as “a TCP application 1604, an IP application 1605,

and a voice application 1602” as well as references to “application programs” and “device application programs.” ’192 Patent 56:44-45, 57:40-46, 105:41-44. Because it is not clear which, if any, of the disclosed applications are those software applications, the term is indefinite.

### 5. “The Given Device Link Agent” (’320 cl. 6)

Google’s Construction	Headwater’s Construction
Indefinite for Lack of Antecedent Basis	Plain and Ordinary Meaning

Claim 6 requires “wherein one of the message delivery triggers is a heartbeat message generated by **the given device link agent**, or a request received from **the given device link agent**.” While claim 1, from which claim 6 depends, discloses multiple “device link agents,” claim 6 fails to inform a POSITA which of these device link agents, if any, would be “the given” device link agent of claim 6. The use of the definite article “the” combined with the modifier “given” indicates that a specific, particular device link agent should have been previously identified in claims 1 or 6. But no such introduction exists, so it is not clear which agent among the plural “device link agents” is “the given” one.

Both the Abstract and Claim 1 introduce “device link agents” in the plural. ’320 Cl. 1 (“the device link agents on the respective wireless end-user devices”); ’320 at Abstract (“A network server system maintains secure Internet data message links with respective device link agents”). Neither can serve as a proper antecedent basis for the singular “the given device link agent.”

This same situation was addressed in *Bushnell Hawthorne, LLC v. Cisco Sys., Inc.*, No. 1:18-CV-760, 2019 WL 2745735, at \*3-5 (E.D. Va. July 1, 2019), *aff’d*, 813 F. App’x 522 (Fed. Cir. 2020). There, the court found that the term “said different IP address” in a limitation reciting “a sixth processor that analyzes a request submitted to said different IP Address” was indefinite for a lack of antecedent basis since it was not clear what IP Address was to be used to determine

what was a “different IP Address.” *Id.* As the district court “[p]ut simply, the multiple differences among the three ‘one or more’ IP addresses supplied by the fifth processor demonstrate that it is not reasonably ascertainable which of the IP addresses supplied might be the different IP address referenced by the claim term ‘said different IP address.’” *Id.*

So too here. While both the Abstract and Claim 1 teach multiple device link agents, nothing in Claim 6 or elsewhere identifies which of these, if any, is “*the given* device link agent” in Claim 6. Thus, the term is indefinite.

## V. CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court find the disputed terms indefinite.

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Respectfully submitted

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 22, 2025, a true and correct copy of this document was served electronically, via ECF, on all counsel of record who are deemed to have consented to such service under the Court's local rules.

*/s/ Lance Yang*

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Lance Yang