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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6

7 AYLUS NETWORKS, INC.,

8 Plaintiff,

9 v.

10 APPLE INC.,

11 Defendant.

Case No. 13-cv-04700-EMC

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT; DENYING PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT; DENYING PLAINTIFF'S  
MOTION TO EXCLUDE CERTAIN  
OPINIONS OF APPLE'S EXPERTS;  
DENYING DEFENDANT'S MOTION  
TO EXCLUDE CERTAIN OPINIONS  
OF AYLUS'S EXPERTS**

Docket No. 180, 182, 185, 188

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16 **I. INTRODUCTION**

17 Plaintiff Aylus Networks, Inc. filed the instant suit against Defendant Apple, Inc., alleging  
18 that Apple's AirPlay feature infringes claims 2 and 21 of U.S. Patent No. RE44,412 ('412 patent).  
19 See Docket No. 37 (Second Amended Complaint) (SAC) at ¶ 11. The '412 patent concerns an  
20 invention "whereby a user of a computer or mobile device can direct and control video signals  
21 from servers located on the internet to be rendered for display on a display device (e.g., a  
22 television)." *Id.* at ¶ 10. Specifically, the '412 patent describes a media streaming architecture  
23 that allows a user to coordinate the transport of media content from an internet-based media server  
24 to a physically proximate media renderer. *Id.* at ¶ 12.

25 AirPlay is a feature that allows users of iOS devices – such as the iPod Touch, iPhone, and  
26 iPad – to select and display video, music, or photos on a television connected to an Apple TV. See  
27 Docket No. 182 at 4. AirPlay can work in two ways. First, it can "mirror" what is being shown  
28 on the screen of the Apple product onto the television. Second, it can "stream" video content that

1 is downloaded from the Apple iTunes store or other third party applications, such as Netflix and  
2 Hulu. Aylus’s theory of direct infringement is limited to when an iOS user purchases iTunes Store  
3 video content and then AirPlays that video to a TV connected to an Apple TV. *Id.* at 3.

4 Pending before the Court are two motions for summary judgment and two motions to  
5 exclude expert reports. Docket No. 180 (Aylus Mot.); Docket No. 182 (Apple Mot.); Docket No.  
6 185 (Apple Daubert Mot.); Docket No. 188 (Aylus Daubert Mot.). The parties’ motions came on  
7 for hearing before the Court on December 17, 2015. For the reasons stated below, the Court  
8 **GRANTS** Apple’s motion for summary judgment. Because Apple’s motion for summary  
9 judgment resolves the merits of the case in its entirety, the Court need not address the remaining  
10 motions.

## 11 **II. BACKGROUND**

12 The ‘412 patent describes two scenarios, one which involves three primary components –  
13 the Control Point (CP), the Media Server (MS), and the Media Renderer (MR) – and one which  
14 involves four primary components – the CP, MS, MR, and the Control Point Proxy (CPP). In the  
15 first scenario, the CP queries the MS for a directory of content, and negotiates content delivery  
16 within the MS, including instructing the MS to deliver content to the MR. Docket No. 183  
17 (Buergi Dec.), Exh. 6 (IPR Decision) at 4-5. The CP also negotiates media rendering with the  
18 MR, instructing the MR to start expecting content from the MS and to present such. *Id.* at 5. The  
19 MS then delivers media content to the MR. *Id.* In the second scenario, the CP is located in a wide  
20 area network via the “Service Provider,” while the CPP is within the “User Premises.” *Id.* at 5.  
21 There, “[t]he CP communicates with the MS, the CPP communicates with the MR, and the CP and  
22 CPP communicate with each other.” *Id.* at 5-6.

23 Apple filed a Petition for *inter partes* review of all claims (*i.e.*, claims 1-33) of the ‘412  
24 patent. The Patent Trial and Appeal Board (PTAB) initiated review of claims 1, 3, 5-20, 22, and  
25 24-33, but not claims 2, 4, 21, and 23. *Id.* at 2. For the claims that the PTAB instituted *inter*  
26 *partes* review, the PTAB found that Apple would likely prevail with respect to those claims being  
27 obvious over the UPnP (Universal Plug and Play) Design book. *Id.* at 14.

28 Following initiation of review, Aylus dismissed with prejudice its infringement claims

1 except as to dependent claims 2 and 21. Docket No. 131. Claim 2 depends from claim 1, while  
2 claim 21 depends from claim 20. In relevant part, Claim 1 is:

3 [a] method of controlling and delivering media content from a media  
4 server (MS) to a media renderer (MR) utilizing a wide area network  
5 for control, comprising the acts of . . . invoking the CPP logic and  
6 the CP logic to cooperatively negotiate media content delivery  
7 between the MS and the MR if one of the MS and MR are not in  
communication with the UE [user endpoint] via a local wireless  
network . . . .

8 Buergi Dec., Exh. 1 (‘412 Patent) col. 24 ll. 37-39, 58-61. Claim 2, in turn, is “[t]he method of  
9 claim 1, wherein the CPP logic is invoked to negotiate media content delivery between the MS  
10 and the MR if the MS and MR are both in communication with the UE (user endpoint) via a local  
11 wireless network.” *Id.* at col. 24 ll. 64-67.

12 Similarly, Claim 20 is:

13 [a] method of controlling and delivering media content from a media  
14 server (MS) to a media renderer (MR) utilizing a wide area network  
15 for control, where a user endpoint (UE) is provisioned with control  
16 point proxy (CPP) logic that includes (i) logic to negotiate media  
17 content delivery with at least one of the MS and the MR, (ii) logic to  
18 cooperate with network control point (CP) logic to negotiate media  
19 content delivery between the MS and the MR, and (iii) video play  
20 controls to control a presentation of content provided by the MS and  
rendered by the MR, wherein the CPP logic resides in the UE and  
serves as a first proxy, comprising the acts of . . . invoking the CPP  
logic and the CP logic to cooperatively negotiate media content  
delivery between the MS and the MR if one of the MS and MR are  
not in communication with the UE via a local wireless network; and

21 *Id.* at col. 25 ll. 55-65, col. 26 ll. 8-11. Claim 21, like claim 2, is “[t]he method of claim 20,  
22 wherein the CPP logic is invoked to negotiate media content delivery between the MS and the MR  
23 if the MS and MR are both in communication with the UE via a local wireless network.” *Id.* at  
24 col. 26 ll. 14-17.

25 In the instant case, Aylus contends that the Control Point Proxy (CPP) is software within  
26 the iOS device, the Control Point (CP) is the iTunes Store [REDACTED] servers (specifically the iTunes  
27 Store servers named [REDACTED], [REDACTED], and [REDACTED]), the Media Server (MS) is the [REDACTED]  
28 Content Delivery Network (CDN) servers, and the Media Renderer (MR) is the Apple TV.

1 According to Aylus’s technical expert, Dr. Dan Schonfeld, the accused product can be operated  
2 by: (1) AirPlay from the Cloud, and (2) AirPlay Version I. *See* Buergi Dec., Exh. 2 (Schonfeld  
3 Report) at 18, 27. For AirPlay from the Cloud, the AirPlay session begins when the user selects  
4 AirPlay on the iOS device to display content on the Apple TV. *Id.* at ¶ 46. The following  
5 sequence is then performed:

6 1. The iOS device (CPP) sends to an [REDACTED] server in the iTunes Store (CP) a  
7 [REDACTED] request with an [REDACTED], a [REDACTED],  
8 and [REDACTED].

9 2. The [REDACTED] server in the iTunes Store sends back to the iOS device a [REDACTED]  
10 [REDACTED] response that includes a [REDACTED], which includes the [REDACTED], [REDACTED],  
11 and [REDACTED].

12 3. The iOS device sends the [REDACTED]  
13 [REDACTED] to the Apple TV (MR).

14 4. The Apple TV sends to an [REDACTED] server in the iTunes Store a [REDACTED]  
15 that includes the [REDACTED].

16 5. The [REDACTED] server in the iTunes Store [REDACTED] and returns to the  
17 Apple TV a [REDACTED] to a Content Delivery Network (CDN) server (MS) and a [REDACTED] that includes  
18 [REDACTED].

19 6. The Apple TV requests the content from the CDN server. The request includes the  
20 [REDACTED] and an [REDACTED].

21 7. The CDN server [REDACTED] and begins sending encrypted content to  
22 the Apple TV.

23 8. The Apple TV sends to the [REDACTED] server in the iTunes Store a [REDACTED]  
24 request that includes the [REDACTED].

25 9. The [REDACTED] server in the iTunes Store performs authentication and returns to  
26 the Apple TV a [REDACTED] that includes a [REDACTED].

27 10. The Apple TV uses the [REDACTED] to [REDACTED] and [REDACTED].  
28 The Apple TV uses the [REDACTED] to [REDACTED] the encrypted content.

1 11. After some time, the Apple TV sends to the [REDACTED] server in the iTunes Store a  
2 [REDACTED] [REDACTED] that includes the [REDACTED].

3 12. The [REDACTED] in the iTunes Store [REDACTED] of the [REDACTED] and  
4 returns a [REDACTED] that includes the [REDACTED].

5 13. The Apple TV uses the [REDACTED] to [REDACTED] and [REDACTED].  
6 The Apple TV uses the [REDACTED] to continue [REDACTED] the encrypted content.

7 14. The Apple TV sends to the [REDACTED] server in the iTunes Store a [REDACTED]  
8 [REDACTED].

9 Buergi Dec., Exh. 7 at 13-14.

10 AirPlay Version 1 involves a user selecting the AirPlay button and selecting a content  
11 destination, upon which the following sequence is performed:

12 1. The iOS device sends to an [REDACTED] server in the iTunes Store a [REDACTED]  
13 [REDACTED] that includes [REDACTED]

14 2. The [REDACTED] server in the iTunes Store sends back to the iOS device a [REDACTED]  
15 [REDACTED] that includes [REDACTED].

16 3. The iOS device begins sending encrypted content to the Apple TV, and also  
17 transmits a [REDACTED] and the [REDACTED] to the Apple TV.

18 4. The Apple TV uses the [REDACTED] to [REDACTED] and [REDACTED]  
19 [REDACTED]. The Apple TV uses the [REDACTED] to [REDACTED] the encrypted content.

20 *Id.* at 15.

21 **III. DISCUSSION**

22 A. Summary Judgment Standard

23 Under Federal Rule of Civil Procedure 56(a), “[t]he court shall grant summary judgment if  
24 the movant shows that there is no genuine dispute as to any material fact and the movant is  
25 entitled to judgment as a matter of law.” As indicated by the language of the rule, “[t]he moving  
26 party has the burden of establishing the absence of a genuine dispute of material fact. The court  
27 must view the evidence in the light most favorable to the non-movant and draw all reasonable  
28 inferences in the non-movant’s favor.” *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036,

1 1049-50 (9th Cir. 2014). “Where the record taken as a whole could not lead a rational trier of fact  
2 to find for the nonmoving party, there is no genuine issue for trial.” *Id.*

3 Where the moving party ultimately bears the burden of proof, the non-moving party may  
4 prevail on a motion for summary judgment by pointing to the moving party’s failure “to make a  
5 showing sufficient to establish the existence of an element essential to that party’s case.” *Celotex*  
6 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In contrast, where a moving party seeks summary  
7 judgment in favor of its own claim, it “‘must offer evidence sufficient to support a finding upon  
8 every element of [its] claim . . . , except those elements admitted . . . ’ by the adversary.” *Watts v.*  
9 *United States*, 703 F.2d 346, 347 (9th Cir. 1983).

10 B. Non-Infringement

11 Apple contends that there is no infringement of dependent claims 2 and 21 because Apple  
12 does not perform the claim step “the CPP logic is invoked to negotiate media content delivery  
13 between the MS and MR.” Apple Mot. at 2. Specifically, Apple argues that the language “the  
14 CPP is invoked” should be read as requiring that *only* the CPP logic is invoked to negotiate media  
15 content delivery, whereas the allegedly infringing activity operates by using *both* the CPP logic  
16 (the iOS device software) and the CP logic (the iTunes Store servers) to negotiate media content  
17 delivery. Apple identifies four steps in the AirPlay from the Cloud session which require  
18 invocation of the iTunes Store servers (steps 2, 5, 9, and 12), and one step in the AirPlay Version 1  
19 session which requires invocation of the iTunes Store servers (step 2). Apple Mot. at 9-10.

20 During the claim construction process, the Court was not asked to construe the term “The  
21 CPP is invoked.” However, the Court agrees with Apple that based on the language of the patent  
22 and Aylus’s statements during the *inter partes* review process, dependent claims 2 and 21 require  
23 that only the CPP logic is invoked to negotiate media content delivery.

24 First, the Court looks at the claim language. Independent claims 1 and 20 read: “invoking  
25 the CPP logic and the CP logic to cooperatively negotiate media content delivery between the MS  
26 and the MR if one of the MS and MR are not in communication with the UE via a local wireless  
27 network . . . .” In contrast, dependent claims 2 and 21 read: “The method of claim 1, wherein the  
28 CPP logic is invoked to negotiate media content delivery between the MS and the MR if the MS

1 and MR are both in communication with the UE via a local wireless network.” Based on this  
2 language, the independent and dependent claims are distinguishable by whether both the CPP  
3 logic and the CP logic negotiate media content delivery (independent claims 1 and 20) or if only  
4 the CPP logic negotiates media content delivery (dependent claims 2 and 21), depending on  
5 whether the MS and MR are in communication with the UE. To read dependent claims 2 and 21  
6 as encompassing both the invocation of CPP logic and the invocation of CPP logic and CP logic  
7 would render this distinction meaningless. *See Seachange Int’l, Inc. v. C-COR Inc.*, 413 F.3d  
8 1361, 1368 (Fed. Cir. 2005) (“The doctrine of claim differentiation stems from ‘the common sense  
9 notion that different words or phrases used in separate claims are presumed to indicate that the  
10 claims have different meanings and scope.”); *see also Merck & Co. v. Teva Pharms. USA, Inc.*,  
11 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of  
12 the claim is preferred over one that does not do so.”); *Elekta Instrument S.A. v. O.U.R. Sci. Int’l,*  
13 *Inc.*, 214 F.3d 1302, 1307 (Fed. Cir. 2000) (construing claim to avoid rendering the 30 degree  
14 claim limitation superfluous).

15 The patent specification also makes this distinction, explaining that “where the UE is in the  
16 proximity of both the desired MS and the desired MR and can communicate with them via a  
17 [Personal Area Network], such as Wi-Fi, the CPP in the UE negotiates the association between the  
18 MS and MR. In this case, *there is no need to involve the CP* in the SN, since this would involve  
19 unnecessary use of wireless bandwidth.” ‘412 Patent col. 17 ll. 50-55 (emphasis added). *See*  
20 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (“The claims, of course, do not stand  
21 alone. Rather, they are part of a fully integrated written instrument, consisting principally of a  
22 specification that concludes with the claims. For that reason, claims must be read in view of the  
23 specification, of which they are a part. As we stated in *Vitronics*, the specification is always  
24 highly relevant to the claim construction analysis.”) (quotations omitted). The specification here  
25 is consistent with the plain language of the subject claims and provides persuasive confirmation of  
26 the Court’s interpretation. *Cf. Straight Path IP Grp., Inc. v. Sipnet EU S.R.O.*, 806 F.3d 1356,  
27 1361 (Fed. Cir. 2015) (explaining that where the claim language has a plain meaning, the  
28 specification plays a more limited role because “unless there is a disclaimer or redefinition,

1 whether explicit or implicit, the proper construction of any claim language must, among other  
2 things, stay true to the claim language, and, in order to avoid giving invention-defining effect to  
3 specification language included for other descriptive and enablement purposes, the court’s focus  
4 remains on understanding how a person of ordinary skill in the art would understand the claim  
5 terms.”) (quotations omitted).

6 Second, this distinction is confirmed by Aylus’s preliminary responses to Apple’s *inter*  
7 *partes* review petitions of the ‘412 patent and the PTAB’s adjudication of the petition. In this  
8 regard, Aylus’s statements are akin to a prosecution disclaimer. Under that doctrine, “[t]he  
9 patentee is held to what he declares during the prosecution of his patent. *Gillespie v. Dywidag*  
10 *Sys. Int’l, USA*, 501 F.3d 1285, 1291 (Fed. Cir. 2007); *see also TomTom, Inc. v. Adolph*, 790 F.3d  
11 1315, 1325 (Fed. Cir. 2015) (“where the patentee has unequivocally disavowed a certain meaning  
12 to obtain his patent, the doctrine of prosecution disclaimer attaches and narrows the ordinary  
13 meaning of the claim congruent with the scope of the surrender”); *Phillips*, 415 F.3d at 1317  
14 (“Like the specification, the prosecution history provides evidence of how the PTO and the  
15 inventor understood the patent.”).<sup>1</sup> In challenging all of the ‘412 patent claims, Apple argued that  
16 the claims were obvious over prior art, particularly the UPnP design. *See* IPR Decision at 2-3. In  
17 its response, Aylus explained that the challenged claims require “determining the ‘network  
18 context’ of the UE (*i.e.*, the networks available to the UE) and the ‘network connectivity’ of the  
19 MS and MR (*i.e.*, the networks through which the UE can communicate with the MS and MR).  
20 Buergi Dec., Exh. 4 (IPR2014-01565 Resp.) at 4; Exh. 5 (IPR2014-01566 Resp.) at 4. For  
21 example:

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23 <sup>1</sup> Other courts in this District have noted that prosecution disclaimer has viability in *in partes*  
24 review proceedings, even though such proceedings are technically an adjudicative proceeding  
25 rather than an examination. *See, e.g., Evolutionary Intelligence, LLC v. Spring Nextel Corp.*, No.  
26 C-13-4513, 2014 U.S. Dist. LEXIS 139066, at \*20 (N.D. Cal. Sept. 26, 2014) (“The IPR  
27 proceedings will also add to the ‘536 Patent’s prosecution history. Prosecution history is an  
28 important part of the intrinsic record relevant to claim construction.”); *Pragmatus AV, LLC v.*  
*Yahoo! Inc.*, No. C-13-cv-1176 EMC, 2014 U.S. Dist. LEXIS 65813, at \*14-15 (N.D. Cal. May  
13, 2014) (“Under Federal Circuit law, comments made by a patent holder during inter partes  
reexamination proceedings can limit claim scope. The same should be true now that inter partes  
review, rather than inter partes reexamination, is in effect.”); *Samuels v. TriVascular Corp.*, No.  
13-cv-2261-EMC, 2015 U.S. Dist. LEXIS 153437, at \*16-17 n.3 (N.D. Cal. Nov. 12, 2015)  
(same).

1  
2 Specifically, for claims 1 and 20, if . . . it is determined that “one of  
3 the MS and MR are not in communication with the UE via a local  
4 wireless network” the “CPP logic and the CP logic are both  
5 invoked[”] and will “cooperatively negotiate media content delivery  
6 between the MS and the MR.” If, however, “the MS and MR are  
7 both in communication with the UE via a local wireless network,  
8 then **only** “the CPP is invoked to negotiate media content delivery  
9 between the MS and the MR.” [Claims 2 and 21].

10 IPR2014-01565 at 34-35 (emphasis added); IPR2014-01566 at 33 (emphasis added); *see also*  
11 IPR2014-01565 Resp. at 4; IPR2014-1566 Resp. at 4 (if neither (or both) the MS or the MR is in  
12 communication with the UE via a local wireless network, “the challenged dependent claims  
13 require that only the control point logic (or only the control point proxy logic) be invoked . . .”).  
14 Thus, Aylus argued that “the challenged claims require selectively invoking the CP logic and/or  
15 CPP logic based on whether the MS and/or MR can communicate with the UE through the local  
16 network.” IPR2014-01565 Resp. at 4; IPR2014-1566 Resp. at 4.

17 Based on this distinction, the PTAB denied Apple’s petition for *inter partes* review of  
18 claims 2 and 21. IPR Decision at 17-18. The PTAB explained that the Petition had relied on the  
19 UPnP design to meet the limitation of claims 1 and 20, which require that the CP and CPP logic  
20 cooperatively negotiate media content delivery between the MS and MR. *Id.* at 17. The Petition  
21 had then used the same evidence to show the UPnP Design also met the limitation of claims 2 and  
22 21, despite the fact that those claims require that the “CPP logic *exclusively* handles the  
23 negotiation of media content delivery between the MS and MR.” *Id.* at 18 (emphasis added).  
24 Because the Petition had already used the UPnP Design to show that both the CP and CPP logic  
25 cooperate to handle the negotiation of media content between the MS and MR (as required for  
26 claims 1 and 20), the PTAB stated, “[i]t [wa]s unclear from the Petition how UPnP design  
27 allegedly meets the *different* limitations of dependent claims 2 [and] 21 . . . in which . . . the CPP  
28 logic *exclusively* handles the negotiation of media content delivery between the MS and MR.” *Id.*  
(emphasis added). In other words, the PTAB agreed with Aylus that claims 1 and 20 required  
both the CP and CPP logic to handle the negotiation of media content delivery between the MS  
and MR whereas claims 2 and 21 required only the CPP to handle that negotiation. The PTAB

1 thus found that there was a reasonable likelihood that Apple would prevail in showing the  
2 unpatentability of claims 1 and 20, but not claims 2 and 21 because of the different limitations.  
3 Based on this distinction, the PTAB instituted *inter partes* review of all claims of the ‘412 patent,  
4 except for dependent claims 2, 4, 21, and 23.<sup>2</sup>

5 Thus, given the claim language, the patent specification, Aylus’s response to Apple’s  
6 petition, and the PTAB’s decision,<sup>3</sup> the Court finds that claims 2 and 21 require that only the CPP  
7 logic is invoked to negotiate media content delivery between the MS and the MR, in contrast to  
8 claims 1 and 20 which require both the CP and CPP to negotiate media content delivery.

9 Aylus responds that by reading this limitation as barring any involvement by the CP logic,  
10 Apple is improperly requesting the Court to rewrite the dependent claims to add a negative  
11 limitation. Docket No. 205-4 (Aylus Opp.) at 3. First, Aylus argues that independent claims 1  
12 and 20 use the term “comprising the acts of,” and that Federal Circuit precedent views this “open  
13 claim language” as signaling that “the *entire* claim is presumptively open-ended.” *Id.* (quoting  
14 *MagSil Corp. v. Hitachi Global Storage Tech., Inc.*, 687 F.3d 1377, 1383 (Fed. Cir. 2012))  
15 (emphasis added by Plaintiff). But while claims 1 and 20 do use the word “comprising,” claims 2  
16 and 21 are dependent claims that have a more limited scope than claims 1 and 20, as explained in  
17 Aylus’s response to Apple’s *inter partes* review petition. *See* IPR2014-1565 Resp. at 35;  
18 IPR2014-1566 Resp. at 33; *see also* IPR2014-1565 Resp. at 4; IPR2014-1566 Resp. at 4 at 4  
19 (“certain of the challenged dependent claims require that only the control point logic (or only the  
20 control point proxy logic) be invoked if it is determined that neither (or both) the MS or the MR  
21 are in communication with the UE via the local wireless network”); *compare with Dippin’ Dots*,

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23  
24 <sup>2</sup> Dependent claims 4 and 23, which are not at issue in this suit, require that the CP logic  
exclusively handles the negotiation of media content delivery between the MS and the MR.

25 <sup>3</sup> The PTAB currently applies “the broadest reasonable interpretation” standard in *inter partes*  
26 review, an issue that is now under review by the Supreme Court. *See In re Cuozzo Speed Techs.,*  
27 *LLC*, 793 F.3d 1268, 1275-79 (Fed. Cir. 2015) (explaining history of the “broadest reasonable  
28 interpretation” standard and applicability in *inter partes* review), *cert granted*, 84 U.S.L.W. 3218  
(U.S. Jan. 15, 2016) (No. 15-446). However, the PTAB’s conclusion was not based on the  
application of the broad standard of review, but rested on the distinction that Aylus itself  
articulated in its response to Apple’s petition.

1 *Inc. v. Mosey*, 476 F.3d 1337, 1343 (Fed. Cir. 2007) (“The presumption raised by the term  
2 ‘comprising’ does not reach into each of the six steps to render every word and phrase therein  
3 open-ended -- especially where, as here, the patentee has narrowly defined the claim term it now  
4 seeks to have broadened”). Thus, the term “comprising” in the independent claims does not  
5 render dependent claims 2 and 21 so open-ended as to include both the invocation of the CPP and  
6 the invocation of the CP and CPP in negotiating media content delivery.

7 Next, Aylus argues that its statements to the PTAB stated that “only the CPP logic *handles*  
8 the negotiation of media content delivery and that the CP logic is not require to participate in the  
9 handling,” as it is in claims 1 and 20. Aylus Opp. at 4. This would not preclude the CPP logic  
10 from communicating with or utilizing the CP logic, as long as it is the CPP logic that “handles”  
11 the negotiations. *Id.* But, as pointed out by Apple during the hearing herein, the claims do not  
12 contain the word “handle.” Nor did Aylus use the word “handle” in its response to Apple’s  
13 petition for *inter partes* review, when Aylus explained that “only ‘the CPP is invoked to negotiate  
14 media content delivery between the MS and the MR.’ [Claims 2 and 21].” IPR2014-1565 Resp. at  
15 35; IPR2014-1566 Resp. at 33. Even if the Court was to read in the word “handle” into the claim,  
16 Aylus has not explained the practical effect of incorporating this word with the claims, and how it  
17 would be distinguished from the plain language of claims 2 and 21.

18 During the hearing on this matter, Aylus essentially conceded that dependent claims 2 and  
19 21 require that only the CPP logic is invoked to negotiate media content delivery. *See* Docket No.  
20 232 at 32:11-15.<sup>4</sup> However, Aylus argued that in the context of an AirPlay session, the CP logic is  
21 not invoked to negotiate media content delivery because everything the CP logic does is in  
22 response to the CPP, such that the CP is passive while the CPP is the exclusive active agent. In  
23 short, Aylus contends steps where the CP is passive are not included as part of the negotiation of  
24 media content delivery. *See* Docket No. 232, 46:23-47:10.<sup>5</sup>

25 \_\_\_\_\_  
26 <sup>4</sup> THE COURT: So what’s important about claim 2 is that not just the facilitation but the  
negotiation is being done not cooperatively but solely by the CPP logic.

27 MR. THAKUR: Right. The CP is asking the question and getting the response.

28 <sup>5</sup> THE COURT: So let me make sure I understand your current position . . . . You don’t take issue  
with the CPP logic being exclusively the active agent not the passive agent. It’s that -- so even if



1 non-infringement. Having found that Apple has not infringed on the '412 patent, Aylus's motion  
2 for partial summary judgment on invalidity, Apple's motion to exclude expert testimony, and  
3 Aylus's motion to exclude expert testimony are **DENIED** as moot.

4 This order disposes of Docket Nos. 180, 182, 185, and 188.

5 The Clerk is instructed to enter judgment and close the file.

6

7 **IT IS SO ORDERED.**

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9 Dated: January 21, 2016

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EDWARD M. CHEN  
United States District Judge

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