

**United States District Court  
Western District of Texas  
Austin Division**

Affinity Labs of Texas, LLC,	)	
	)	
Plaintiff,	)	
	)	Case No. 1:15-cv-00849-RP
v.	)	
	)	<b>Jury Trial Demanded</b>
Netflix, Inc.	)	
	)	
Defendant.	)	
	)	

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**Declaration of Professor Kevin C. Almeroth in Support of Affinity Labs of Texas, LLC's  
Opening Claim Construction Brief**

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I, Kevin C. Almeroth, submit this Declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I have prepared this Declaration as an independent consultant at the request of Plaintiff Affinity Labs of Texas, LLC (“Plaintiff” or “Affinity Labs”). I am over 18 years of age and I would be competent to testify as to the matters set forth herein if I am called upon to do so.

2. My name is Kevin C. Almeroth, Professor in the Department of Computer Science at the University of California, Santa Barbara. I also hold faculty appointments and am a founding member of the Computer Engineering (CE) Program, Media Arts and Technology (MAT) Program, and the Technology Management Program (TMP). I have been a faculty member at UCSB since July 1997.

3. I hold three degrees from the Georgia Institute of Technology: (1) a Bachelor of Science degree in Information and Computer Science earned in June 1992; (2) a Master of Science degree in Computer Science (with specialization in Networking and Systems) earned in June 1994; and (3) a Doctor of Philosophy (Ph.D.) degree in Computer Science (Dissertation Title: *Networking and System Support for the Efficient, Scalable Delivery of Services in Interactive Multimedia System, minor in Telecommunications Public Policy*) earned in June 1997.

4. My involvement in the research community extends to leadership positions for several academic journals and conferences. I am the co-chair of the Steering Committee for the ACM Network and System Support for Digital Audio and Video (NOSSDAV) workshop and on the Steering Committees for the International Conference on Network Protocols (ICNP), ACM Sigcomm Workshop on Challenged Networks (CHANTS), and IEEE Global Internet

(GI) Symposium. I have served or am serving on the Editorial Boards of IEEE/ACM Transactions on Networking, IEEE Transactions on Mobile Computing, IEEE Network, ACM Computers in Entertainment, AACE Journal of Interactive Learning Research (JILR), and ACM Computer Communications Review. I have co-chaired a number of conferences and workshops including the IEEE International Conference on Network Protocols (ICNP), IEEE Conference on Sensor, Mesh and Ad Hoc Communications and Networks (SECON), International Conference on Communication Systems and Networks (COMSNETS), IFIP/IEEE International Conference on Management of Multimedia Networks and Services (MMNS), the International Workshop On Wireless Network Measurement (WinMee), ACM Sigcomm Workshop on Challenged Networks (CHANTS), the Network Group Communication (NGC) workshop, and the Global Internet Symposium; and I have served on the program committees for numerous conferences.

5. I am an author or co-author of nearly 200 technical papers, published software systems, IETF Internet Drafts, and IETF Request for Comments (RFCs).

#### **I. Basis of Opinions Formed**

6. In this section, I describe my understanding of certain legal standards. Based on my professional experience, I am familiar with the patent system and the process of applying for and obtaining patents. I have been informed of these legal standards by Affinity's attorneys. I am not an attorney, and I am relying only on instructions from Affinity's attorneys for these legal standards.

7. I understand that, under 35 U.S.C. § 282, a patent is presumed valid. While I understand that this presumption is rebuttable, I understand that Netflix bears the burden of proving invalidity by clear and convincing evidence.

8. I have been instructed by counsel on the law regarding claim construction and patent claims, and understand that a patent may include two types of claims, independent claims and dependent claims. An independent claim stands alone and includes only the limitations it recites. A dependent claim can depend from an independent claim or another dependent claim. I understand that a dependent claim includes all the limitations that it recites in addition to all of the limitations recited in the claim from which it depends.

## **II. Claim Construction Standards**

9. I have been instructed by counsel that claim construction is a matter of law for the arbiter of law to decide. Claim terms should be given their ordinary and customary meaning within the context of the patent in which the terms are used, *i.e.*, the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention in light of what the patent teaches.

10. I understand that, to determine how a person of ordinary skill would understand a claim term, one should look to those sources available that show what a person of skill in the art would have understood that disputed claim language to mean. Such sources include the words of the claims themselves, the remainder of the patent's specification, the prosecution history of the patent (all considered "intrinsic" evidence), and "extrinsic" evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.

11. I understand that, in construing a claim term, one looks primarily to the intrinsic patent evidence, including the words of the claims themselves, the remainder of the patent specification, and the prosecution history. I understand that extrinsic evidence, which is evidence external to the patent and the prosecution history, may also be useful in interpreting patent claims when the intrinsic evidence itself is insufficient.

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