**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

CITRIX SYSTEMS, INC.,

Plaintiff,

v.

AVI NETWORKS, INC.,

Defendant.

C.A. No. 17-1843-LPS

**JURY TRIAL DEMANDED**

# CITRIX'S ANSWERING CLAIM CONSTRUCTION BRIEF

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## I. INTRODUCTION

Plaintiff Citrix Systems, Inc. ("Citrix") hereby responds to Defendant Avi Network's ("Avi") Opening Brief. Avi's brief, which lacks any expert support[1], and proposes transparently results-oriented constructions designed to manufacture a non-infringement defense based on a purported negative limitation of the asserted claims. Specifically, Avi contends that the asserted claims prohibit the intermediary device from interacting with application layer messages it routes between clients and servers—presumably because Avi's accused product does interact with those messages. Moreover, Avi's brief fails to acknowledge, much less attempt to reconcile, inconsistencies between its arguments here and those it put forward in its IPR petitions. These inconsistencies further reveal Avi's improper approach to *Markman* proceedings.

Avi's proposals should be rejected because they lack any basis in the claim language, specifications, or file histories. Avi's marquee evidence to support its construction of "transport layer connection," namely a statement that "no application layer interaction is required," (1) describes features of a ***distinct*** invention related to connection multiplexing in a different patent application that does not claim priority to or from the Asserted Patents; (2) says only that application layer interaction is not "required" for connection multiplexing, ***not*** that application layer interaction is ***prohibited***; and (3) would lead to a construction that excludes a preferred embodiment where the intermediary device plainly interacts with and modifies application layer information to support efficient connection reuse—intrinsic evidence as to which Avi is completely silent in its opening brief.

[1] Avi recently revealed that it intends to file an expert declaration with its responsive brief. To the extent Avi relies on expert testimony that it should have disclosed in its Opening Brief, Citrix reserves the right to seek leave to address that testimony.

## II. "REQUEST" AND "RESPONSE" TERMS

The claim construction arguments relating to "request" and "response" are closely related and are thus discussed collectively below.

As an initial matter, Avi's brief lacks any support to show that "request" and "response" require construction in the first place. In its IPR petitions, Avi did not contend these terms required construction, and offers no explanation for why the situation is different here. *See* D.I. 104, Ex. J ('493 IPR Petition) at 7; *id.*, Ex. K ('120 IPR Petition) at 7. Avi thus ignores the threshold requirement to justify construction and proceeds directly to contending that these terms should "include two fundamental features that a skilled artisan would recognize are in the claimed [terms]," namely "application layer" and "both a header and a payload." D.I. 102 at 13.

The mere fact that a skilled artisan would recognize that a term has a particular feature (according to Avi) is not in and of itself sufficient to require construction. The Court is under no obligation to construe a term just because a party requests it. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008) ("[D]istrict courts are not (and should not be) required to construe every limitation present in a patent's asserted claims."); *see also ActiveVideo Networks, Inc. v. Verizon Comm'n, Inc.*, 694 F.3d 1312, 1326 (Fed. Cir. 2012) (finding that the district court did not err under *O2 Micro* in concluding that "superimposing" claim terms "have plain meanings that do not require additional construction"); *Unwired Planet, LLC v. Square, Inc.*, No. 3:13-cv-00579-RCJ-WGC, 2014 WL 4966033, at *2 (D. Nev. Oct. 3, 2014) (citing *O2 Micro* for the proposition that "a district court is not obligated to construe terms with ordinary meanings, lest trial courts be inundated with requests to parse the meaning of every word in the asserted claims").

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