

examination of Vizio's expert, Mr. Roop, as an admission that the '643 patent discloses sufficient structure under § 112, ¶ 6:

- Q. But in those cites cited by Mr. Bristow, would you agree that one skilled in the art would know that a processor is supposed to be doing the implementation and that one of ordinary skill would be able to write the program to do it?
- A. **I would agree.** And I also would say that I have looked at all those citations, and none of those will disclose an algorithm of how the inventor intended to do it.

(CMIB at 68 (emphasis original).) Rovi's question to Mr. Roop, and the bolded answer it provides, however, only relate to the enablement requirement. *See Aristocrat*, 521 F.3d at 1336. Rovi conveniently ignored the expert's contention that none of the particular citations disclose an algorithm.<sup>8</sup> (CMIB at 68.)

As none of these specific passages or figures cited by Rovi disclose a "specific algorithm" for "displaying a program guide display on the viewer television equipment that displays at least one video-on-demand listing," this means-plus-function term does not adequately disclose a structure as required by § 112, ¶ 6. *Aristocrat*, 521 F.3d at 1333. The alternate construction proposed by Rovi merely includes specific quotes from the same citations as listed in the original construction. (*See* JC at 13; *see also* '643 patent.) Therefore, the undersigned rejects Rovi's alternate proposed structure for the same reasons as discussed above.

Accordingly, the undersigned hereby finds the term "means for displaying a program guide display on the viewer television equipment that displays at least one video-on-demand program listing" to be indefinite, rendering claim 1 indefinite in its entirety and thus, invalid.

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<sup>8</sup> Not only does Rovi take Mr. Roop's testimony out of context in its initial brief, it opportunely shortens the § 112, ¶ 6 test as presented in *Aristocrat*. (CMIB at 67; *Aristocrat*, 521 F.3d at 1337 ("[T]he proper inquiry for purposes of section 112 paragraph 6 is to look at the disclosure of the patent and determine if one of skill in the art would have understood that disclosure to encompass software to perform the function and been able to implement such a program, *not simply whether one of skill in the art would have been able to write such a software program.*") (emphasis added).)

**b) “means for indicating that a video clip preview is available for a video-on-demand program that is associated with a video-on-demand program listing”**

The term “means for indicating that a video clip preview is available for a video-on-demand program that is associated with a video-on-demand program listing” appears in claim 1 of the '643 patent. The undersigned has found hereinabove claim 1 invalid for indefiniteness. (See Section VII.B.2.a., *supra*.) Therefore, the undersigned need not construe this term.

**c) “means for allowing a viewer to select to view the video clip preview from the program guide display”**

The term “means for allowing a viewer to select to view the video clip preview from the program guide display” appears in claim 1 of the '643 patent. The undersigned has found hereinabove claim 1 invalid for indefiniteness. (See Section VII.B.2.a., *supra*.) Therefore, the undersigned need not construe this term.

**d) “means for displaying the video clip preview on the viewer television equipment”**

The term “means for displaying the video clip preview on the viewer television equipment” appears in claim 1 of the '643 patent. The parties agree that this term is subject to 35 U.S.C. § 112, ¶ 6 and also agree on the claimed function. The parties, however, disagree on the structure, and have proposed the following constructions:

<b>ROVI</b>	<b>VIZIO</b>
<p><u>Function:</u> displaying the video clip preview on the viewer television equipment</p> <p><u>Structure:</u> a processor that performs any of the algorithms to display the video clip preview on the viewer television equipment as described in col. 3, lines 29-34, col. 3, lines 42-44, col. 7, lines 6-29, col. 9, line 48 – col. 10, line 7, col. 10, line 59 – col. 11, line 52; and/or Figures 6B and/or 9 and related text from the specification, or equivalents thereof</p>	<p><u>Function:</u> displaying the video clip preview on the viewer television equipment</p> <p><u>Structure:</u> Vizio contends that this element lacks sufficient structure and so violates 35 U.S.C. § 112.</p>

ROVI	VIZIO
<p><u>Alternate Structure:</u> The specification states that “[e]ach viewer television equipment 30 preferably contains a processor to handle tasks associated with implementing an interactive television program guide on the viewer television equipment 30”; and “... may store certain information such as video-on-demand programs and video-on-demand program data in home storage device 35 ...”; and further “... may be controlled by one or more remote controls 50 or any other suitable viewer input interface ..., etc.” col. 7:6-40; see also col. 6, lines 37-65 (“[v]iewer television equipment 30 may ... be any suitable equipment into which circuitry similar to set top box circuitry has been integrated, such as an advanced television receiver (such as HDTV) ...”). The patent recites that “[s]ome of the steps involved in providing the browsing display features ... are illustrated in the flow chart of FIG. 9. ...” col. 10, line 59 – col. 11, line 52; see col. 3, lines 42-44; Fig. 9. “If a video-on-demand program of interest is found, the viewer has several options. For example, the viewer may: 1) request a video clip of the program, if available (e.g., using an on-screen button or remote control key), 2) request the program (e.g., using an on-screen button or remote control key) or 3) request more information about that program by pressing info key 53 (step 103). If a video clip is requested, the video clip is presented on the viewer's display screen (step 102). ...” col. 10, line 59 – col. 11, line 52; see col. 3, lines 42-44; Fig. 9. “Certain video on demand programs may have video clip previews associated with them. ... program guide display 70 may include a video clip icon 79 to indicate that the listed program has an associated video clip preview. If a viewer who is browsing the program listings on program guide display 70 becomes interested in a particular video-on-demand program, he or she may request a video clip of that program. ... By pressing any appropriate key on remote 50 such as OK key 55 (FIG. 5), the viewer can direct the program guide to request a video clip of that program ... Video window 71 may be implemented using any suitable method such as a partial screen overlay, or a picture-in-picture video window, etc.” col. 9, line 48 – col. 10, line 7; see col. 3, lines 29-34; Figure 6B.</p>	

The '643 patent specification never discloses a specific algorithm for “displaying the video clip preview on the viewer television equipment.” (See generally '643 patent.) The citations in Rovi’s proposed structure fail to disclose sufficient structure for the same reasons as discussed in Section VII.B.2.a. (See Section VII.B.2.a., *supra*.) In short, these citations merely describe embodiments of the program guide, detail the user’s interaction with the program guide, and consist of final outcomes instead of “specific algorithms.” None of the citations disclose a step-by-step procedure as required by *Aristocrat* and *Typhoon Touch*. See *Aristocrat*, 521 F.3d at 1337-38; see also *Typhoon*, 659 F.3d at 1386.

Accordingly, the undersigned hereby finds the term “means for displaying the video clip preview on the viewer television equipment” to be indefinite, thereby providing another basis for rendering claim 1 indefinite in its entirety and thus, invalid.

- e) **“means for displaying an ordering display screen after the video clip preview of the video-on-demand program is displayed, wherein the ordering display screen provides the viewer with the opportunity to select an ordering option to order the video-on-demand program”**

The term “means for displaying an ordering display screen after the video clip preview of the video-on-demand program is displayed, wherein the ordering display screen provides the viewer with the opportunity to select an ordering option to order the video-on-demand program” appears in claim 1 of the '643 patent. The parties agree that this term is subject to 35 U.S.C. § 112, ¶ 6. The parties disagree on the function and structure of the term, and have proposed the following constructions:

ROVI	VIZIO
<u>Function</u> : displaying an ordering display screen after the video clip preview of the video-on-demand program is displayed	<u>Function</u> : displaying an ordering display screen after the video clip preview of the video-on-demand program is displayed, wherein the ordering display screen provides the viewer with the opportunity to select an ordering option to order the video-on-demand program
<u>Structure</u> : a processor that performs any of the algorithms to display an ordering display screen as	



ROVI	VIZIO
<p>described in col. 3, lines 40-44, col. 7, lines 6-40, col. 10, lines 8-34, col. 10, line 59 – col. 11, line 52; and/or Figures 8 and/or 9 and related text from the specification, or equivalents thereof</p> <p><u>Alternate Structure:</u> The specification states that “[e]ach viewer television equipment 30 preferably contains a processor to handle tasks associated with implementing an interactive television program guide on the viewer television equipment 30”; and “... may store certain information such as video-on-demand programs and video-on-demand program data in home storage device 35 ...”; and further “... may be controlled by one or more remote controls 50 or any other suitable viewer input interface ..., etc.” col. 7:6-40; see also col. 6, lines 37-65 (“[v]iewer television equipment 30 may ... be any suitable equipment into which circuitry similar to set-top box circuitry has been integrated, such as an advanced television receiver (such as HDTV) ...”). The patent recites that “[s]ome of the steps involved in providing the browsing display features ... are illustrated in the flow chart of FIG. 9. ...” col.10, line 59 – col. 11, line 52; see col. 3, lines 40-44; Fig. 9. “If a video-on-demand program is requested, a configuration and control screen may appear which requires viewer input (step 104). The viewer may fill-out and submit this form to order the requested program. ...” col.10, line 59 – col. 11, line 52; see col. 3, lines 40-44; Fig. 9. If a viewer who is browsing the program listings on program guide display 70 becomes interested in a particular video-on-demand program, he or she may request that program. ... By pressing any appropriate key on remote 50 such as select key 52 (FIG. 5), the viewer can direct the program guide to request that program ... If the viewer happens to be browsing more information about a particular program on a detailed information screen (not shown), that screen may contain an on-screen button for ordering that video-on-demand program. By pressing any appropriate key on remote 50 such as buy key 56 (FIG. 5), the viewer may activate the on-screen button and thereby direct the program guide to request that program ... . Once the viewer has requested a video-on-demand program, one or more configuration and control screens may appear which require viewer input to complete the order. ... configuration and control screen 80 may contain the title 81 and price 89 of the requested program</p>	<p><u>Structure:</u> Vizio contends that this element lacks sufficient structure and so violates 35 U.S.C. § 112.</p>

ROVI	VIZIO
<p>and a series of data fields for viewer input. ... A viewer may navigate through configuration and control screen 80 using cursor keys 54 and may enter the required information into the data fields using appropriate keys on remote 50 (FIG. 5"). col. 10, lines 8-34; col. 3, lines 40-44; Fig. 8.</p>	

The '643 patent specification never discloses a specific algorithm for "displaying an ordering display screen after the video clip preview of the video-on-demand program is displayed." (*See generally* '643 patent.) The citations in Rovi's proposed structure fail to disclose sufficient structure for the same reasons as discussed in Section VII.B.2.a. (*See* Section VII.B.2.a., *supra*.) In short, these citations merely describe embodiments of the program guide, detail the user's interaction with the program guide, and consist of final outcomes instead of "specific algorithms." None of the citations disclose a step-by-step procedure as required by *Aristocrat* and *Typhoon Touch*. *See Aristocrat*, 521 F.3d at 1337-38; *see also Typhoon*, 659 F.3d at 1386.

Accordingly, the undersigned hereby finds the term "means for displaying an ordering display screen after the video clip preview of the video-on-demand program is displayed, wherein the ordering display screen provides the viewer with the opportunity to select an ordering option to order the video-on-demand program" to be indefinite, thereby providing another basis for rendering claim 1 indefinite in its entirety and thus, invalid.

f) “further comprising means for displaying a requested video clip preview in a video window”

The term “further comprising means for displaying a requested video clip preview in a video window” appears in claim 3 of the '643 patent. The parties agree that this term is subject to 35 U.S.C. § 112, ¶ 6 and also agree on the claimed function. The parties, however, disagree on the structure, and have proposed the following constructions:

ROVI	VIZIO
<p><b>Function:</b> displaying a requested video clip preview in a video window</p> <p><b>Structure:</b> a processor that performs any of the algorithms to display the video clip preview in a video window as described in col. 3, lines 29-34, col. 3, lines 42-44, col. 7, lines 6-29, col. 9, line 48 – col. 10, line 7, col. 10, line 59 – col. 11, line 52; and/or Figures 6B and/or 9 and related text from the specification, or equivalents thereof</p> <p><b>Alternate Structure:</b> The specification states that “[e]ach viewer television equipment 30 preferably contains a processor to handle tasks associated with implementing an interactive television program guide on the viewer television equipment 30”; and “... may store certain information such as video-on-demand programs and video-on-demand program data in home storage device 35 ...”; and further “... may be controlled by one or more remote controls 50 or any other suitable viewer input interface ..., etc.” col. 7:6-40; see also col. 6, lines 37-65) (“[v]iewer television equipment 30 may ... be any suitable equipment into which circuitry similar to set-top box circuitry has been integrated, such as an advanced television receiver (such as HDTV) ....”). The patent recites that “[s]ome of the steps involved in providing the browsing display features ... are illustrated in the flow chart of FIG. 9. ...” col. 10, line 59 – col. 11, line 52; see col. 3, lines 42-44; Fig. 9. “If a video-on-demand program of interest is found, the viewer has several options. For example, the viewer may: 1) request a video clip of the program, if available (e.g., using an on-screen button or remote control key), 2) request the program (e.g., using an on-screen button or remote control key) or 3) request more information about that program by pressing</p>	<p><b>Function:</b> displaying a requested video clip preview in a video window</p> <p><b>Structure:</b> Vizio contends that this element lacks sufficient structure and so violates 35 U.S.C. § 112.</p>

ROVI	VIZIO
<p>info key 53 (step 103). If a video clip is requested, the video clip is presented on the viewer's display screen (step 102). ..." col. 10, line 59 – col. 11, line 52; see col. 3, lines 42-44; Fig. 9. "Certain video on demand programs may have video clip previews associated with them. ... program guide display 70 may include a video clip icon 79 to indicate that the listed program has an associated video clip preview. If a viewer who is browsing the program listings on program guide display 70 becomes interested in a particular video-on-demand program, he or she may request a video clip of that program. ... By pressing any appropriate key on remote 50 such as OK key 55 (FIG. 5), the viewer can direct the program guide to request a video clip of that program ... in certain embodiments video window 71 may be a full screen display or may be viewer-selectable (i.e., can change from a full screen display to a partial screen display and vice versa). Video window 71 may be implemented using any suitable method such as a partial screen overlay, or a picture-in-picture video window, etc." col. 9, line 48 – col. 10, line 7; see col. 3, lines 29-34; Figure 6B.</p>	

The '643 patent specification never discloses a specific algorithm for "displaying a requested video clip preview in a video window." (See generally '643 patent.) The citations in Rovi's proposed structure fail to disclose sufficient structure for the same reasons as discussed in Section VII.B.2.a. (See Section VII.B.2.a., *supra*.) In short, these citations merely describe embodiments of the program guide, detail the user's interaction with the program guide, and consist of final outcomes instead of "specific algorithms." None of the citations disclose a step-by-step procedure as required by *Aristocrat* and *Typhoon Touch*. See *Aristocrat*, 521 F.3d at 1337-38; see also *Typhoon*, 659 F.3d at 1386.

Accordingly, the undersigned hereby finds the term “further comprising means for displaying a requested video clip preview in a video window” to be indefinite, rendering claim 3 indefinite in its entirety and thus, invalid.<sup>9</sup>

**g) “further comprising means for displaying a requested video clip preview in a full screen video window”**

The term “further comprising means for displaying a requested video clip preview in a full screen video window” appears in claim 4 of the ’643 patent. The parties agree that this term is subject to 35 U.S.C. § 112, ¶ 6 and also agree on the claimed function. The parties, however, disagree on the structure, and have proposed the following constructions:

ROVI	VIZIO
<p><u>Function:</u> displaying a requested video clip preview in a full screen video window</p> <p><u>Structure:</u> a processor that performs any of the algorithms to display the video clip preview on the viewer television equipment as described in col. 3, lines 29-34, col. 3, lines 42-44, col. 7, lines 6-29, col. 9, line 48 – col. 10, line 7, col. 10, line 59 – col. 11, line 52; and/or Figures 6B and/or 9 and related text from the specification, or equivalents thereof</p> <p><u>Alternate Structure:</u> The specification states that “[e]ach viewer television equipment 30 preferably contains a processor to handle tasks associated with implementing an interactive television program guide on the viewer television equipment 30”; and “... may store certain information such as video-on-demand programs and video-on-demand program data in home storage device 35 ...”; and further “... may be controlled by one or more remote controls 50 or any other suitable viewer input interface ..., etc.” col. 7:6-40; see also col. 6, lines 37-65 (“[v]iewer television equipment 30 may ... be any suitable equipment into which circuitry similar to set-top box circuitry has been integrated, such as an advanced television receiver (such as HDTV) ....”). The patent recites that “[s]ome of the</p>	<p><u>Function:</u> displaying a requested video clip preview in a full screen video window</p> <p><u>Structure:</u> Vizio contends that this element lacks sufficient structure and so violates 35 U.S.C. § 112.</p>

<sup>9</sup> Since claim 3 depends from claim 1, the fact that claim 1 has been found hereinabove to be indefinite provides an additional basis for claim 3 being indefinite.

ROVI	VIZIO
<p>steps involved in providing the browsing display features ... are illustrated in the flow chart of FIG. 9. ...” col. 10, line 59 – col. 11, line 52; see col. 3, lines 42-44; Fig. 9. “If a video-on-demand program of interest is found, the viewer has several options. For example, the viewer may: 1) request a video clip of the program, if available (e.g., using an on-screen button or remote control key), 2) request the program (e.g., using an on-screen button or remote control key) or 3) request more information about that program by pressing info key 53 (step 103). If a video clip is requested, the video clip is presented on the viewer's display screen (step 102). ...” col. 10, line 59 – col. 11, line 52; see col. 3, lines 42-44; Fig. 9. “Certain video on demand programs may have video clip previews associated with them. ... program guide display 70 may include a video clip icon 79 to indicate that the listed program has an associated video clip preview. If a viewer who is browsing the program listings on program guide display 70 becomes interested in a particular video-on-demand program, he or she may request a video clip of that program. ... By pressing any appropriate key on remote 50 such as OK key 55 (FIG. 5), the viewer can direct the program guide to request a video clip of that program ... in certain embodiments video window 71 may be a full screen display or may be viewer-selectable (i.e., can change from a full screen display to a partial screen display and vice versa). Video window 71 may be implemented using any suitable method such as a partial screen overlay, or a picture-in-picture video window, etc.” col. 9, line 48 – col. 10, line 7; see col. 3, lines 29-34; Figure 6B.</p>	

The '643 patent specification never discloses a specific algorithm for “displaying a requested video clip preview in a full screen video window.” (*See generally* '643 patent.) The citations in Rovi's proposed structure fail to disclose sufficient structure for the same reasons as discussed in Section VII.B.2.a. (*See* Section VII.B.2.a, *supra*.) In short, these citations merely describe embodiments of the program guide, detail the user's interaction with the program guide, and consist of final outcomes instead of “specific algorithms.” None of the citations disclose a

step-by-step procedure as required by *Aristocrat* and *Typhoon Touch*. See *Aristocrat*, 521 F.3d at 1337-38; see also *Typhoon*, 659 F.3d at 1386.

Accordingly, the undersigned hereby finds the term “further comprising means for displaying a requested video clip preview in a full screen video window” to be indefinite, rendering claim 4 indefinite in its entirety and thus, invalid.<sup>10</sup>

**h) “interactive television video-on-demand program guide system”**

The phrase “interactive television video-on-demand program guide system” appears in claims 1, 7, and 13 of the ’643 patent. The parties disagree on the proper claim construction and have proposed the following constructions:

ROVI	VIZIO
A system that allows a viewer to direct a program guide to present a video-on-demand program guide display on viewer television equipment	A system comprised of a video server that stores video-on-demand programs and a program guide database that are in communication with viewer television equipment

Rovi submits that its proposed construction “closely aligns with the intrinsic evidence.” (CMIB at 95.) According to Rovi, the specification explains that the invention is directed to a system that has the ability to display a program guide, which is “interactive” because it provides a viewer with capabilities for viewing and selecting programs. (*Id.* at 96 (citing ’643 patent at 2:7-9, 2:18-24).)

Rovi argues that Vizio’s proposed construction improperly requires that an “interactive television video-on-demand program guide system” have (1) a system comprised of a video server that stores video-on-demand programs and (2) a program guide database that are in communication with viewer television equipment. (*Id.* at 96.) These limitations, Rovi contends,

<sup>10</sup> Since claim 4 depends from claim 1, the fact that claim 1 has been found hereinabove to be indefinite provides an additional basis for claim 4 being indefinite.

are based on a single embodiment, which should not be read into the claims. (*Id.* at 97-98 (citing Rovi Ex. 11 at 192:20-193:6, 194:17-195:24).) Rovi further contends that terms such as “server” and “database” do not appear in any of the claims. (CMRB at 46.)

Vizio contends that its proposed construction is consistent with the claim language and the specification. (RMIB at 45.) Vizio argues that one skilled in the art would understand that this term requires “at least a database of stored video-on-demand programs and a database of information regarding the video-on-demand programs.” (*Id.* (citing Vizio Ex. 5 at ¶ 63).) According to Vizio, the specification expressly defines this term in the embodiments illustrated in Figures 2 and 4. (*Id.* at 45-47 (citing ’643 patent at 6:6-11, 4:48-57, 5:10-17, Figs. 2 and 4).) Vizio submits that Figures 2 and 4 are the only disclosure of a “program guide system” and each of those embodiments includes a facility that houses a video server for storing available video-on-demand programs. (*Id.* at 47.) Vizio further submits that Figures 2 and 4 each disclose a database for generating the program guide display screen to allow a viewer to browse through available video-on-demand programming. (*Id.* (citing Vizio Ex. 5 at ¶ 70).) Without the inclusion of a video server and program guide database, Vizio argues, this invention would not be functional. (*Id.* (citing Vizio Ex. 5 at ¶ 71; Vizio Ex. 9 at 146:9-147:5); RMRB at 23 (citing Vizio Ex. 5 at ¶¶ 62-63; Vizio Ex. 11 at 153:11-154:8).)

Vizio claims that Rovi’s proposed construction “improperly recasts the meaning of this term in purely functional language, *i.e.*, the ability of a viewer to direct a program guide to present a video-on-demand program guide display.” (RMIB at 48.) Vizio asserts that Rovi is trying to turn this limitation into a means-plus-function limitation and in doing so, Rovi ignores the express teachings of the ’643 specification. (*Id.*)



For the following reasons, Vizio's proposed construction is adopted. Rovi's proposed construction fails to give any real meaning to the limitation as it attempts to define the limitation in terms of what a user/viewer does. While Rovi cites to the specification in support of its position, such citations merely give a generic description of the invention and do not provide any meaning for the term "interactive television video-on-demand program guide system." (*See e.g.*, '643 patent at 2:7-9 ("It is therefore an object of the present invention to provide a video-on-demand program guide system with improved capabilities for viewing and selecting television programs.")) The specification, however, does explain that the program guide system includes a program guide database for storing program guide information and a video server that stores video-on-demand programs. (*See* '643 patent at 4:52-57, 5:10-13.) In addition, one of ordinary skill in the art would understand that the "interactive television video-on-demand program guide system" would not be functional without a video server and a program guide database. (*See* Vizio Ex. 5, Roop Rebuttal Rpt., at ¶ 71.) In fact, Rovi's expert agreed that an interactive program guide requires something that stores video-on-demand programs and some type of database or memory that stores program guide information. (*See* Vizio Ex. 9, Bristow Rough Dep. Tr., at 146:9-147:5.) Moreover, the specification states that "[v]ideo-on-demand programs generally consist of a library or database of programs that are available at any time for viewing. Such programs are typically stored in a video server located in a nearby television distribution facility." ('643 patent at 1:30-34.) The specification also explains that interactive program guides are usually implemented by using a set-top box, which "typically receive[s] program information from a central broadcasting center and store[s] it in a memory within the set-top box." (*Id.* at 1:50-57.)

Accordingly, the undersigned hereby construes “interactive television video-on-demand program guide system” as “*a system comprised of a video server that stores video-on-demand programs and a program guide database that are in communication with viewer television equipment.*”

**i) “video-on-demand program listing”**

The phrase “video-on-demand program listing” appears in claims 1, 7, and 13 of the ’643 patent. The parties disagree on the proper claim construction and have proposed the following constructions:

ROVI	VIZIO
Information about a particular video-on-demand program	Display showing at least the title of a video-on-demand program

Rovi argues that its proposed construction is aligned with the intrinsic evidence, which consistently describes the term “video-on-demand program listing” as “information about a particular video-on-demand program.” (CMIB at 99-100 (citing ’643 patent at 7:30-33, 8:25-45 (“Program guide display 70 contains information about a particular video-on-demand program. . . The displayed information may include (but is not limited to) the program title 76 (The Truman Show), the length or ‘run-time’ of that program 74 (110 minutes), a brief text description 73 of that program . . .”), Figs. 6A, 6B).)

Rovi objects to Vizio’s proposed construction on the grounds that “video-on-demand program listing” does necessarily include the title of the program. (CMIB at 100; CMRB at 50.) In opposition, Rovi cites (1) language in the specification stating that “[t]he displayed information may include (but is not limited to) the program title;” and (2) Vizio’s expert’s admission that the patent does not say that “video-on-demand program listing” must include the program title. (*Id.* (citing ’643 patent at 8:25-39; Rovi Ex. 11 at 200:22-201:6.)

According to Vizio, the plain meaning of “video-on-demand program listing” dictates that it is a listing or list of available programs. (RMIB at 55.) Vizio contends that one skilled in the art would know that to list the available video-on-demand programs the guide must, at a minimum, provide the names of the programs. (*Id.*; RMRB at 31 (“Common sense dictates that a viewer must know the title of the program before the viewer can decide whether to order that video-on-demand program.”).) Further, Vizio asserts that the title of the on-demand-program is required because it is the only piece of information consistently shown throughout the specification as part of the listing. (RMRB at 31; RMIB at 55-56 (citing ’643 patent at 3:64-67, Fig. 1B).)

Vizio objects to Rovi’s proposed construction, arguing that it does nothing to clarify the disputed term. (RMIB at 56; RMRB at 32 (“Rovi’s construction does nothing more than broaden the word ‘listing’ as ‘providing information,’ without indicating what type or how much information is provided, or even that the presentation of that information bears any resemblance to a ‘listing.’”)).

The undersigned agrees with Vizio and finds that as a list of available video-on-demand programs, “video-on-demand program listing” necessarily includes the title of the available program. (*See* Rovi Ex. 10 at 29 (“One of ordinary skill would know that in order to list available video-on-demand programs, a program guide must at least provide the name of the video on demand program.”); Rovi Ex. 11 at 199:22-23 (“I’m not aware of program listings that don’t include titles.”).) While the specification provides that “displayed information may include (but is not limited to)” title, run-time, a brief description, a video on demand icon, a video on demand program number, and the program’s rating, this language does not mean, as Rovi insists, that titles are not part of program listings. Rather the language indicates that the information

identified (*i.e.*, title, run-time, description) is not an exhaustive list of all information that could be included in the display. (*Id.* at 8:32-40.)

Accordingly the undersigned hereby construes “video-on-demand program listing” as a “*display showing at least the title of a video-on-demand program.*”

**j) “a video clip preview is available for a video-on-demand program that is associated with a video-on-demand program listing”**

The phrase “a video clip preview is available for a video-on-demand program that is associated with a video-on-demand program listing” appears in claims 1, 7, and 13 of the ’643 patent. The parties disagree on the proper claim construction and have proposed the following constructions:

ROVI	VIZIO
A video clip preview for a particular video-on-demand program is available for that particular listed video-on-demand program	A video clip preview for a listed video-on-demand program is available

Rovi asserts that its construction closely aligns with the intrinsic evidence and, unlike Vizio’s, gives meaning to all of the claim terms. (CMIB at 102, 106.) In support thereof, Rovi contends that the specification teaches that if a particular listed video-on-demand has a video clip preview, then that video clip preview has a one-to-one correspondence with that video-on-demand program. (*Id.* at 103-105 (citing ’643 patent at 8:25-42, 9:48-59, Fig. 6B).) Rovi also claims that the scope of claim 1 confirms that a video clip preview for a particular video-on-demand program is available for that particular listed video-on-demand program “because, *after* the video clip preview associated with the particular video-on-demand program is displayed, the ordering display screen provides the viewer with the opportunity to select an ordering option to order that particular video-on-demand program.” (*Id.* at 105.)

Rovi objects to Vizio's proposed construction as incomplete. (*Id.* at 106.) Specifically, Rovi argues that Vizio's construction fails to give meaning to all of the terms of the claims. (CMIB at 106; CMRB at 51.) By ignoring the end portion of the term (*i.e.*, "that is associated with a video-on-demand listing"), Vizio has, Rovi asserts, rendered certain claim language meaningless, which is contrary to Federal Circuit law and should be avoided. (*Id.*)

Vizio submits that this term has its plain and ordinary meaning of "a video clip preview for a listed video-on-demand program is available." (RMIB at 56 (citing Ex. 5, Roop Rebuttal Rpt., at ¶ 80); RMRB at 32.) Vizio claims that Rovi has improperly added language to a clear term, and in the process, has made the term more confusing. (RMIB at 56.) Vizio contends that for the first part of the term (*i.e.*, "a video clip preview is available for a video-on-demand program"), Rovi's construction does nothing more than substitute the phrase "for *a particular* video-on-demand program" for the claim language "for a video-on-demand" program." (RMIB at 57 (emphasis original); RMRB at 33 (emphasis original).) For the second part of the claim term (*i.e.*, "that is associated with a video-on-demand program listing"), Vizio asserts that Rovi merely substitutes "*for that particular listed* video-on-demand program." (*Id.*) Vizio insists that Rovi's construction "improperly limits the claim such that a video clip can only be available for one video, even though the plain language does not support such a construction." (*Id.*)

"[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips*, 415 F.3d at 1312 (quoting *Vitronics*, 90 F.3d at 1582). Moreover, claims themselves provide substantial guidance as to the meaning of particular claim terms. *Id.* at 1314; *see also Vitronics*, 90 F.3d at 1582 ("First, we look to the words of the claims themselves, both asserted and nonasserted, to define the scope of the patented invention.") (internal citations omitted).

Here, the specification makes quite clear that “[c]ertain video on demand programs may have video clip previews associated with them.” (’643 patent at 9:48-49.)

Turning to the parties’ constructions, the undersigned finds neither satisfactory. Rovi’s proposal merely adds language (*i.e.*, “a particular” and “for a particular”) and does little to clarify the meaning of the claim language. In fact, Rovi’s construction takes an otherwise clear term and makes it ambiguous. While Vizio’s construction is less confusing than Rovi’s, it fails to give meaning to the end portion of the term – “that is associated with a video-on-demand program listing – and is therefore improper. *See Merck & Co. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”)

Accordingly, the term “a video clip preview is available for a video-on-demand program that is associated with a video-on-demand program listing” shall be construed according to its plain and ordinary meaning.

**k) “a program guide display”**

The term “a program guide display” appears in claims 1, 7, and 13 of the ’643 patent. The parties disagree on the proper claim construction and have proposed the following constructions:

<b>ROVI</b>	<b>VIZIO</b>
A display screen that comprises program information	Screen that displays VOD information without completely obscuring television programming

Rovi asserts that the specification of the ’643 patent and the plain meaning of “a program guide display” support construing the disputed term as “a display screen that comprises program information.” (CMIB at 108-109 (citing ’643 patent at 8:25-45 (“Program guide display 70 preferably contains information about a particular video-on-demand program.”).) Rovi objects

to Vizio's proposed construction, arguing that it improperly imports the limitation "without completely obscuring television programming" into the claims. (CMIB at 109-111 ("[T]he '643 invention contemplates *both*, a presentation of the program guide display alone, *and* a presentation of the program guide display with a television program.") (emphasis original).) According to Rovi, independent claims 1, 7, and 13 are not directed to "simultaneous display" because "simultaneous display" is "separate and distinct subject matter for dependent claims 6, 12 and 18." (CMRB at 48-49.)

Vizio contends that "the '643 patent consistently describes '*the invention*' as a program guide display that does not obscure television programming" and, accordingly, the claims are not entitled to a broader scope than that embodiment. (RMIB at 49-51 (emphasis original) (citing *Chimi*, 402 F.3d at 1379; '643 patent at 4:28-33, 8:5-15, 9:32-37, Figs. 6A, 6B, 7); RMRB at 25-30 (citing *SciMed Life Sys., Inc., v. Advanced Cardiovascular Sys. Inc.*, 242 F.3d 1337, 1341 (Fed. Cir. 2001)).) According to Vizio, the patentee stated that a disadvantage of the prior art was that a viewer could not watch a television program while viewing the program guide display. (See RMIB at 50-51 (citing '643 patent at 1:66-2:2 ("Current interactive video-on-demand program guides display program listings on the viewer's display screen. . . . This type of video-on-demand program guide covers the entire television screen and does not allow the viewer to view both the video-on-demand program guide display and a previously selected television channel.")).) Vizio argues that the patentee then distinguished the invention of the '643 patent from the prior art on the basis of simultaneous viewing, and that this prevents a program guide display from covering a display that completely obstructs a television program. (RMIB at 50-15 (citing '643 patent at 4:28-33 ("In contrast, the present invention provides a program guide having a browsing display that allows a viewer to browse through and select a video-on-demand

program from a list of available video-on-demand programs while continuing to view a previously selected television program.”)).)

The undersigned finds Vizio’s arguments persuasive and agrees that Rovi disclaimed program guide displays that completely obscure television programs. The specification of the ’643 patent repeatedly distinguishes the prior art from the invention based on the prior art’s complete obstruction of television programming. For example, under “Background of the Invention” the specification states that known interactive video-on-demand program guide displays “cover[] the entire television screen and do[] not allow the viewer to view both the video-on-demand program guide display and a previously selected television channel.” (*See* ’643 patent at 1:63-2:2; *see also* 3:1-13 (describing Figures 1A, 1B, and 1C, which depict the prior art program guide displays, as “cover[ing] a majority of the viewer’s display screen”); 4:15-22 (“There are a number of disadvantages associated with the arrangements of FIGS. 1A-1C. For example, the program guide displays shown in FIGS. 1A-1C do not allow the viewer to watch video from a previously selected channel while viewing available video-on-demand programs.”) Moreover, the specification expressly refers to “*the present invention*” when stating that the program guide display allows users to browse listings while continuing to view television programs. (*Id.* at 4:28-32 (“*the present invention* provides a program guide having a browsing display that allows a viewer to browse through and select a video-on-demand program from a list of available video-on-demand programs while continuing to view a previously selected television program”); 2:10-15 (“It is another object of *the present invention* to provide a video-on-demand program guide system that allows a viewer to simultaneously view both a video-on-demand program guide display and a selected television program on a television display screen.”) (emphasis added).) This language leads to the conclusion that the claims only



cover a program guide display that does not completely obstruct television programming.<sup>11</sup> See *Honeywell Int'l, Inc. v. ITT Indus., Inc.*, 452 F.3d 1312, 1318 (Fed. Cir. 2006); *Lydall Thermal/Acoustical, Inc. v. Federal-Mogul Corp.*, 344 Fed. Appx. 607, 613 (Fed. Cir. 2009) (quoting *Honeywell*, 452 F.3d at 1318) (“[W]hen a patentee consistently describes one embodiment as ‘the present invention,’ ‘[t]he public is entitled to take the patentee at his word.’”); see also *Chimie*, 402 F.3d at 1379 (citing *Modine Mfg. Co. v. U.S. Int'l Trade Comm'n*, 75 F.3d 1545, 1551 (Fed. Cir. 1996)) (“[W]hen the preferred embodiment is described in the specification as the invention itself, the claims are not necessarily entitled to a scope broader than that embodiment.”).

Accordingly, the undersigned hereby construes “a program guide display” as “***screen that displays video-on-demand information without completely obscuring television programming.***”

**D) “main display screen”**

The term “main display screen” appears in claims 1 and 7 of the '643 patent. The parties disagree on the proper claim construction and have proposed the following constructions:

ROVI	VIZIO
A screen that occupies substantially the whole display and on which other screens can be superimposed	Screen capable of simultaneously displaying the currently tuned television program and video-on-demand guide display

Rovi contends that its proposed construction is proper because it reflects the plain and ordinary meaning of “main display screen,” and is in line with the teachings of the specification

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<sup>11</sup> The undersigned is not persuaded by Rovi’s assertion that the doctrine of claim differentiation precludes adoption of Vizio’s construction. Essentially, Rovi contends that claims 1, 7, and 13 cannot be limited to program guide displays that do not completely obstruct television program because dependent claims 6, 12, and 18, however, cover simultaneous viewing. Claims 6, 12, and 18 do not claim the simultaneous display of television programming and the program guide display. Rather, these claims refer to simultaneous displaying of (1) a television program; (2) a partial screen video window which can display a video clip preview; and (3) the program guide display. (See '643 patent at 12:25-28, 12:61-64, 14:6-20.)

of the '643 patent. (CMIB at 112 (citing '643 patent at Figs. 6A, 6B, 7, and 8).) Rovi objects to Vizio's proposed construction, arguing that it imports a benefit of a particular embodiment (*i.e.*, "simultaneously displaying the currently tuned television program and video-on-demand guide display") into the claims. (CMIB at 113; CMRB at 50 ("[N]othing in the specification *requires* that a 'main display screen' be capable of 'simultaneous display.' Likewise nothing in the asserted independent claims require 'simultaneous display.'") (emphasis original).) According to Rovi, the "simultaneous display" limitation is found in dependent claims 6, 12, and 18 and therefore cannot be present in independent claims 1, 7, and 13. (CMRB at 50.)

Vizio asserts that its proposed construction should be adopted because "the only invention disclosed in the '643 patent requires that the main display screen be capable of simultaneously displaying the currently tuned television program and video-on-demand program display guide." (RMIB at 53-54 (citing '643 patent at 9:32-37 ("While program guide display 70 is active, the television program to which set-top box 34 is currently tuned continues to be displayed in *main display screen 72*. Although a viewer may scroll through several video-on-demand programs on program guide display 70, *the video on main display screen 72 remains tuned to the program on channel 5.*") (emphasis original), 8:5-15, Figs 6A, 7 and 8).)

According to Vizio, the claims should be limited to simultaneous display because "[t]hat feature is the invention." (RMRB at 31.) Vizio argues that Rovi's proposed construction should be rejected because there is not "a single instance in the specification where the main display screen does not allow simultaneous viewing of the program guide display and the tuned television program." (*Id.*)

The undersigned finds Rovi's proposed construction best reflects the plain meaning of "main display screen." The '643 patent consistently uses "main display screen" to refer to the

portion of the television that displays television programs and/or program guides. (See '643 patent at 7:41-44 (“During normal operation, play key 58 or VOD browse key 51 may be used to toggle the program guide display on and off the main display screen.”), 8:5-15 (“Set-top box 34 can be directed to present program guide display 70 on main display screen 72. . . . This allows the viewer to simultaneously view video-on-demand program listings while viewing a television program on main display screen 72. ”), 9:32-37 (“While program guide display 70 is active, the television program to which set-top box 34 is currently tuned continues to be displayed on the main display screen 72.”), Figs. 6A, 6B, 7, 8.) The undersigned rejects Vizio’s proposed construction because the specification does not limit the “main display screen” to a screen simultaneously displaying a television program and video-on-demand guide display.

Accordingly, the undersigned hereby construes “main display screen” as “*a screen that occupies substantially the whole display and on which other screens can be superimposed.*”

**m) “icon”**

The term “icon” appears in claims 8 and 14 of the '643 patent. The parties disagree on the proper claim construction and have proposed the following constructions:

ROVI	VIZIO
Visible indicator	Display image representative of an available functionality

Rovi argues that icon should be given its plain and ordinary meaning, which Rovi contends is “visible indicator.” (CMIB at 113.) Rovi claims the specification supports this interpretation, stating that “the program guide display 70 may include a video clip icon 79 to *indicate* that the listed program has an associated video clip preview.” (*Id.* at 114 (emphasis original) (citing '643 patent at 9:49-51).) Rovi also asserts that one of ordinary skill in the art would understand the meaning of “icon” to be “visible indicator.” (CMRB at 52 (citing Rovi Ex.

6, Bristow Rebuttal Rpt. at 159-67).) Rovi alleges that Vizio's expert conceded that an "icon" is at least some form of a visible indicator. (CMIB at 114 (citing Roop Tr. at 248:17-249:4).) Rovi contests Vizio's construction, arguing that the phrases "display image," "image," and "symbol" are never used in the specification. (*Id.*) Lastly, Rovi argues that Vizio's expert relies too heavily on extrinsic evidence to construe the term "icon." (*Id.* at 117.)

Vizio contends that each time the '643 patent specification uses the term "icon," the term is used to refer to a "display image representative of an available functionality." (RMIB at 58.) Vizio argues that the "icons" shown (items 75 and 79 in Figs. 6A, 6B and 7) are all intended to be recognizable as meaning (75) the selected program is indeed a video-on-demand program, and (79) there is a video preview available for the selected program. (*Id.* at 58-59.) Vizio also asserts that the extrinsic evidence supports its construction. (*Id.* at 59.) Vizio alleges that an "icon" is defined in *Computer Graphics* as "a pictorial representation of an object, an action, a property, or some other concept." (*Id.* (citing Foley, et al., *Computer Graphics: Principles and Practice in C*, (2d ed. 1995)).) Additionally, Vizio contends that *Computer Graphics* recognizes that "visual images (textual or iconic menu items) are associated with already familiar words and meanings." (*Id.*) Vizio argues that in light of the intrinsic and extrinsic evidence, Rovi's construction of "icon" is overly broad. (*Id.* (submitting that even an LED light or animation could be "icons" if construed as "visible indicators"); RMRB at 35.)


The undersigned finds that "icon" should be construed as "display image representative of an available functionality." The '643 patent specification uses the term "icon" three times. ('643 patent at 8:34-37, 9:50.) In each instance, the "icon" is a representative of an available functionality. (*Id.*) For example, "icon 75" represents that "the program is indeed available on demand" and "icon 79" represents that "a video clip is available for the listed video-on-demand

program.” (*Id.* at 8:35-38, 9:49-51 (stating that “icon 79” represents “that the listed program has an associated video clip preview”).)

Rovi’s proposed construction of “icon” is overbroad and improperly expands the scope of the claims of the ’643 patent. Defining “icon” as “visible indicator” would capture certain “visual indicators” not supported by the specification or the plain and ordinary meaning of “icon.” For instance, blinking lights or changes in font color would be “visible indicators,” but not “icons.” All “icons” are “visible indicators,” as each party admits, but not all “visible indicators” are “icons”. (4/5/12 Tr. at 180:17-21.)

Accordingly, the undersigned hereby construes the term “icon” to mean “*display image representative of an available functionality.*”

**SO ORDERED.**

  
\_\_\_\_\_  
Charles E. Bullock  
Chief Administrative Law Judge

**CERTAIN PRODUCTS CONTAINING INTERACTIVE  
PROGRAM GUIDE AND PARENTAL CONTROLS  
TECHNOLOGY**

**337-TA-820**

**CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER NO. 35** has been served on the following parties as indicated, on September 7 2012.



Lisa R. Barton, Acting Secretary  
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